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THE

Laws Relating to Buildings,

COMPRISING

THE METROPOLITAN BUILDINGS ACT:

FIXTURES;

INSURANCE AGAINST FIRE;

ACTIONS ON BUILDERS' BILLS;

DILAPIDATIONS;

AND

A Copious Glossary of Technical Terms

PECULIAR TO BUILDING.

ILLUSTRATED WITH NUMEROUS ENGRAVINGS.



BY

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OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW;

AND

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LONDON:

LUMLEY, 56, CHANCERY LANE.

MDCCCXLV.

LONDON :
WILLIAM STEVENS, PRINTER, BELL YARD,
TEMPLE BAR.

P R E F A C E.

THE subject matter of this work having occupied more space than was originally contemplated, it has been found necessary to make some slight deviation from the original plan.

It is now submitted to the public, in the hope that it may be found of service, as a correct and concise manual of the Laws relating to Buildings. Its effect is directly practical, and the selection and arrangement of the materials have been governed accordingly ; everything not of immediate utility having been rigidly excluded, with a view to bring prominently forward the most intelligible and popular explanation of the law ; avoiding, as far as practicable, all expressions which are technical, or abstruse, and therefore difficult of comprehension to the unprofessional reader.

GENERAL ANALYSIS

OF

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THE

Metropolitan Buildings Act.

7 & 8 VICTORIÆ, CAP. 84.

*An Act for regulating the Construction and Use of
Buildings in the Metropolis and its Neighbourhood.*

[9th August, 1844.]

WHEREAS by the several acts mentioned in Schedule (A.) to this Act annexed, provisions are made for regulating the construction of buildings in the metropolis, and the neighbourhood thereof, within certain limits therein set forth; But forasmuch as buildings have since been extended in nearly continuous lines or streets far beyond such limits, so that they do not now include all the places to which the provisions of such acts, according to the purposes thereof, ought to apply; and moreover such provisions require alteration and amendment; It is expedient to extend such limits, and otherwise to amend such acts:

Preamble.

*Extension of
limits, and
amendment
of law.*

And forasmuch as in many parts of the metropolis and the neighbourhood thereof, the drainage of the houses is so imperfect as to endanger the health of the inhabitants; It is expedient to make provision for facilitating and promoting the improvement of such drainage:

*Improvement of
drainage.*

And forasmuch as by reason of the narrowness of streets, lanes and alleys, and the want of a thoroughfare in many places, the due ventilation of crowded neighbourhoods is often impeded, and the health of the

*Securing a
sufficient
width of
streets, &c.*

inhabitants thereby endangered, and from the close contiguity of the opposite houses, the risk of accident by fire is extended; It is expedient to make provision with regard to the streets and other ways of the metropolis, for securing a sufficient width thereof:

Improper
use of build-
ings.

And forasmuch as many buildings and parts of buildings unfit for dwellings are used for that purpose, whereby disease is engendered, fostered and propagated; It is expedient to discourage and prohibit such use thereof:

Regulation
of explosive
works.

And forasmuch as by the carrying on in populous neighbourhoods of certain works, in which materials of an explosive or inflammable kind are used, the risk of accidents arising from such works is much increased; It is expedient to regulate, not only the construction of the buildings in which such dangerous works are carried on, but also to provide for the same being carried on in buildings at safe distances from other buildings which are used either for habitation or for trade in populous neighbourhoods:

Regulation
of deleterious
works.

And forasmuch as by the carrying on of certain works of a noisome kind, or in which deleterious materials are used, or deleterious products are created, the health and comfort of the inhabitants are extensively impaired and endangered; It is expedient to make provision for the adoption of all such expedients as either have been or shall be devised for carrying on such businesses, so as to render them as little noisome or deleterious as possible to the inhabitants of the neighbourhood; and if there be no such expedients, or if such expedients be not available in a sufficient degree, then for the carrying on of such noisome and unwholesome businesses at safer distances from other buildings used for habitation:

Execution of
Act, and su-
perintend-
ence thereof.

And forasmuch as great diversity of practice has obtained among the officers appointed in pursuance of the said acts to superintend the execution thereof in the several districts to which such acts apply, and the means at present provided for determining the numerous matters in question which constantly arise, tend to promote such diversity, to increase the expense, and

to retard the operations of persons engaged in building; It is expedient to make further provision for regulating the office of surveyor of such several districts, and to provide for the appointment of officers to superintend the execution of this Act throughout all the districts to which it is to apply; and also to determine sundry matters in question incident thereto, as well as to exercise in certain cases, and under certain checks and control, a discretion in the relaxation of the fixed rules, where the strict observance thereof is impracticable, or would defeat the object of this Act, or would needlessly affect, with injury, the course and operation of this branch of business:

Now for all the several purposes above mentioned, *General*
and for the purpose of consolidating the provisions of *Provisions.*
the law relating to the construction and the use of buildings in the metropolis and its neighbourhood; Be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That with regard to this Act generally, so far as relates *Operation of*
to the operation thereof in reference to time, it shall *Act.*
come into operation at the following times; (that is to say,) as to the districts and the officers to be appointed in pursuance hereof on the first day of September next, and as to the buildings, streets and other matters, on the first day of January, one thousand eight hundred and forty-five, And that on the said first day of January all the *Statutes re-*
Acts mentioned in the Schedule (A.) hereunto annexed, *pealed.*
except so far as in the said schedule is provided, shall be and are hereby repealed.

II. And be it declared, with regard to this Act generally, so far as relates to the construction of certain terms and expressions used therein, That the following terms and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context, or by the nature of the subject-matter; that is to say,—

The word "street" to include every square, circus, *Street.*
crescent, street, road, place, row, mews, lane, or

General Provisions.

place along which carriages can pass, or are intended to pass; and that, whether there be or be not, in addition to the carriage-way, a footway, paved or otherwise:

- Alley.** The word "alley" to include any court, alley, passage, or other public place, which can be used as a footway only:
- Square.** The word "square," as applied to any area of building, to contain one hundred superficial feet:
- Floor.** The word "floor" to mean the horizontal platform forming the base of any story, and to include the timber or bricks, or any other substance constituting such platform:
- Story.** The word "story" to include the full thickness of such floor, as well as the space between the upper surface of one floor and the under surface of the floor next above it; or if there be no floor, then the space between the surface of the ground and the under surface of the floor next above it: That is to say, that the thickness of the floor is to be included in the measurement of the story.
- External wall.** The term "external wall" to apply to every outer wall of buildings now built or hereafter to be built, which (excepting the footing thereof on one side) shall stand wholly upon ground of the owner of such buildings, and shall not be used or intended to be used as a party-wall under the definition hereinafter contained, whether the same shall adjoin or not to other outer or to party-walls:
- Party-wall.** The term "party-wall" to apply to every wall which shall be used, or be built in order to be used, as a separation of two or more buildings with a view to the occupation thereof by different families, or which shall be actually occupied by different families, and also every wall which shall stand upon ground not wholly be- A "party-fence-wall" is a party-wall dividing intermixed land, such wall not being used for building purposes, but only as a boundary, fence, or division wall.

longing to the same owner to a greater extent than the projection of its footing on one side : *General Provisions.*

The term “already built” used in reference to buildings, to apply to buildings built before the first day of January, one thousand eight

Plans attached to building contracts, building leases, or agreements for leases extending over a series of years, may be modified according to the provisions hereinafter contained in sections 9 and 10.

Already built.

hundred and forty-five, or commenced before that day, and covered in and rendered fit for use within twelve months thereafter ; and used in reference to streets and alleys, to apply to all streets or alleys made or laid out before that day, and which shall be formed and rendered fit for use within twelve months thereafter :

The term “hereafter to be built,” used in reference to buildings, to apply to all buildings to be built or commenced after the first day of January, one thousand eight hundred and forty-five, or which, being commenced, shall not be covered in within twelve months thereafter ; and used in reference to streets and alleys, to apply to all streets or alleys not laid out before the said first day of January, or which being laid out shall not be rendered fit for use within twelve months thereafter :

Hereafter to be built.

The word “parish” to include all parochial districts and extra-parochial places in which separate churchwardens, overseers, or constables are appointed, and where two parishes have been united for ecclesiastical purposes, then to include such united parishes :

Parish.

The word “owner” to apply generally to every person in possession or receipt, either of the whole or of any part of the rents or profits of any ground or tenement, or in the occupation of such ground or

Tenants in common will be bound under the provisions of this act, (ss. 50 and 112,) to join in necessary repairs, that is to say, in such repairs as the district surveyor or official referees may certify to be necessary.

Owner.

General Provisions.

Official referees.

Surveyor.

The Surveyor.

Month.

The commissioners of works and buildings.

Justice of peace.

Local officers.

tenement, other than as a tenant from year to year, or for any less term, or a tenant at will :

The term "official referees" to mean the persons appointed in pursuance of this Act to be official referees of metropolitan buildings :

The word "surveyor" to apply to all surveyors to be appointed in pursuance of this Act, or whose appointment is confirmed by this Act ; and also to all deputy or assistant surveyors to be appointed under this Act :

The words "the surveyor," used without any addition, to mean the surveyor in whose district the buildings, street, or alley, or other subject-matter shall be, or any deputy or assistant surveyor duly acting in his behalf :

The word "month" to mean a calendar month :

The expression "the commissioners of works and buildings" to mean the commissioners of her Majesty's woods, forests, land revenues, works and buildings :

The expression "justice of the peace" to mean a justice of the peace for the county, division, or liberty within which the building or other subject-matter, or any part thereof, is situate ; unless it be situate within the city of London or the liberties thereof, in reference to which any matter or thing elsewhere required or authorized to be done either by one or by two or more justices of the peace, may be done either by the lord mayor of the city of London, or by any one, two, or more justices of the peace for the said city ; or unless the subject-matter be situate in the district of any police court of the metropolis, in reference to which any matter or thing elsewhere required or authorized to be done by two or more justices may be done by one magistrate :

And, generally, whensoever the name of an officer having local jurisdiction in respect of his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the officer having

jurisdiction in that place, within which is situate the building or other subject-matter, or any part thereof to which such reference applies : General Provisions.

And subject as aforesaid to the context, and to the nature of the subject-matter, words importing the singular number are to be understood to apply to a plurality of persons or things ; and words importing the masculine gender are to be understood to apply to persons of the feminine gender ; and words importing an individual are to be understood to apply to a corporation or company, or other body of persons. Singular and plural.
Masculine and feminine.
Corporate body.

III. And be it enacted, with regard to this Act generally, so far as relates to the operation thereof in reference to localities, that the operation of this Act shall extend to all places within the following limits ; (that is to say) 3.
Extent of operation of Act in reference to localities.

To all such places lying on the north side or left bank of the river Thames as are within the exterior boundaries of the parishes of *Fulham, Hammersmith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, Saint Pancras, Islington, Stoke Newington, Hackney, Stratford-le-Bow, Bromley, Poplar and Shadwell* : The new districts created by this Act are printed in *italics*.

And to such part of the parish of Chelsea as lies north of the said parish of Kensington :

And to all such parts and places lying on the south side or right bank of the said river as are within the exterior boundaries of the parishes of *Woolwich, Charlton, Greenwich, Deptford, Lee, Lewisham, Camberwell, Lambeth, Streatham, Tooting and Wandsworth* :

And to all places lying within two hundred yards from the exterior boundary of the district hereby defined, except the eastern part of the said boundary, which is bounded by the river Lea.

IV. And forasmuch as, partly by the rapid increase 4.
ower to ex-

General Provisions.

tend the
limits of
Act.

of population in the neighbourhood of the districts to which this Act is to apply, and partly by the tendency of this Act to induce building speculation in such neighbourhoods in order to evade the provisions thereof, the evils which have arisen in the districts not now subject to regulation, will in all probability arise in such neighbourhoods, It is expedient to make provision for the prevention of such evils; and if they should arise, for the remedy thereof, now for those purposes, Be it enacted, with regard to this Act generally, so far as relates to the application thereof to other parts and places in the neighbourhood of the districts appointed by this Act, whether such districts immediately adjoin such parts or places or not, That if, from the growing increase of the population or otherwise, it shall appear to her Majesty in council to be expedient that the provisions of this Act should be extended to any place within twelve miles from Charing-cross, in the city of Westminster, then it shall be lawful for her Majesty in council to direct, by order in council, that at or from a time to be named in such order, the provisions of this Act shall apply to such places; and, at or from such time, all such provisions of whatever nature, whether penal or otherwise, so far as they shall be capable of application to such places, shall be and are hereby declared to apply thereto as if such places were expressly named herein; and that notice of the time when it shall please her Majesty to order any such extension to be taken into consideration by her privy council shall be published by royal proclamation in the "London Gazette," one month at the least before such extension shall be taken into consideration; And that three weeks at the least before such matter shall be so considered, it shall be the duty of the official referees and the overseers of the parishes within which such parts or places are situate, to cause copies of such proclamation to be fixed on the doors of the churches and chapels within such parishes, and that every order in council made in pursuance of this enactment, shall be published in the "London Gazette."

Publication
of notice of
intention to
extend limits
of Act.

5.

Regulation
of buildings.

V. And now generally, for the purpose of regulating

the building and the rebuilding upon sites of former buildings, and the enlarging and altering of all buildings, of what nature soever, within the limits aforesaid; Be it enacted, with regard to every such building hereafter to be built (except the buildings comprised in Schedule (B.) hereto annexed, and except sewers made by or under the direction of any commissioners of sewers), so far as relates to building the same, and with regard to every such building, either already or hereafter built, (except the said buildings comprised in the said Schedule (B.), and except the said sewers), so far as relates to the rebuilding, and the enlarging or altering the same, and that whether such buildings be built or rebuilt on old or new foundations, or partly on old and partly on new foundations,

Buildings, New and Old.

—
Rates of buildings, and thicknesses of walls and footings, and rules concerning buildings.

For a definition of the distinction between "Repair" and "Rebuilding," see the Glossary, Art. REBUILDING.

That, notwithstanding any thing contained to the contrary in any act of parliament now in force, every such building shall be built, rebuilt, enlarged or altered in reference to the walls, whether external or party-walls, and to the number and height of the stories or rooms therein, and to the chimnies, and to the roofs, and to the timbers, and to the drains, and to the projections, and to any other parts or appendages of every such building, in the manner and of the materials, and in every other respect in conformity with the several particulars, rules and directions which are specified and set forth in the several Schedules (C.), (D.), (E.), (F.), (G.), (H.), (I.), (K.), to this Act annexed, according to the classes of buildings, and the rates of such classes to which such buildings are by the Schedule (C.) declared to belong; subject nevertheless to any other rules and directions in this Act contained in the same behalf; and subject in every case of doubt, difference or dissatisfaction in respect thereof, either between any parties concerned or between any party concerned and the surveyor of the district, to the determination of the official referees, upon a reference of the matter in

*Buildings,
New and
Old.*

*Buildings
under super-
vision of offi-
cial referees.*

*7.
Special su-
pervision of
exempted
buildings.*

question, according to the provisions of this Act in that behalf.

VI. And be it enacted, with regard to all buildings of the first rate of the second or warehouse class, and to all buildings of the third or public-building class (except the buildings hereinbefore excepted), so far as relates to the supervision thereof, That, subject to the provisions in Schedule (C.) and elsewhere in this Act made in respect thereof, every such building shall be built under the special supervision of the official referees, according to the provisions of this Act in that behalf, as well as under the ordinary supervision of the surveyor; and if any difference arise as to whether any such building be liable to such special supervision, the same shall be determined by the official referees; subject nevertheless to an appeal, at the instance of any party interested, to the commissioners of works and buildings, whose decision in the matter shall be final.

VII. And whereas, by several acts now in force, certain buildings and structures have been exempted from the operation of the Act mentioned in the Schedule (A.), hereto annexed, for the regulation of buildings and party-walls within the cities of London and Westminster, and the liberties thereof, and other the parishes and places therein mentioned: Be it enacted, with regard to the buildings hereinbefore exempted and comprised in Schedule (B.), so far as relates to the supervision thereof, That, notwithstanding any thing contained to the contrary in any act or acts now in force, every such building

Many buildings hitherto exempted from the operations of the Building Act, as royal palaces, gaols, bridges and many others, as detailed in Schedule (B.) are by this clause brought under its jurisdiction.

or other structure mentioned in the said Schedule (B. Part I.) shall be subject to special supervision by the official referees, according to the provisions of this Act in that behalf; and every such building or other structure mentioned in the said Schedule (B. Part II.) shall be exempt from supervision.

VIII. Provided always, and be it enacted, with regard to any building of whatever kind, which is not hereby expressly assigned to any class or rate of a class, so far as relates to the application of this Act thereto, That if any party be desirous of erecting any building which does not come within any one of the said classes, or of any rate of such classes, then such building shall be built in accordance with such class and rate as shall be directed by the surveyor, subject, as in other cases of doubt, difference or dissatisfaction, to an appeal to the official referees.

*Buildings,
New and
Old.*

8.

*Buildings
not within
rates.*

IX. Provided always, and be it enacted, with regard to any building of whatever class, so far as relates to the modification of any written contract or agreement now in force for erecting or altering such building (other than a contract or agreement in the nature of a building lease), That it shall not be lawful to execute such contract otherwise than in conformity with the provisions of this Act; but

9.

*Modification
of building
contracts.*

it shall be lawful for either party, and he is hereby entitled to deviate from such contract, so far as any part thereof may remain to be executed after this Act shall have come into operation; and the alterations rendered necessary by this Act shall be performed as if this Act had been in force when such contract was entered into; And that if the parties thereto shall disagree about the difference of the costs and expenses of the works when performed according to the provisions of this Act, and the works as stipulated for in such contract, then, upon notice

This clause clearly sets aside all contracts for building according to plans not in conformity with the provisions of this Act. Where, however, such a contract, entered into in the form of an agreement to build, has been partially acted upon, and the plan thereby actually established; such plan may be carried out to completion, provided that all the foundations be laid before the 1st of January, 1845, and the building completed before the 1st of January, 1846, for it would then come under the definition (s. 2,) of "already built." A lessee cannot, however, call upon his lessor to alter any building plan attached to a current contract, excepting inasmuch as the same may have been rendered actually illegal by this Act; as in the case of the width of a street, &c.; and, moreover, a lessor so altering any plan as

*Reference to
the surveyor,
or on appeal
to the official
referees.*

*Buildings,
New and
Old.*

being given in writing by one party to the other, it shall be lawful for either party, and he is hereby entitled, to refer the matter to the surveyor, who shall determine the same, subject to appeal as aforesaid to the official referees; and the award of such official referees shall be final and binding on all the parties, and in all respects as if such award had formed part of the contract; and the costs of the reference shall be borne by all, or any, or either of the parties, in such manner and proportion as the surveyor, or, in case of appeal, as the official referees, shall appoint.

10.

Modification
of building
of leases.

X. Provided always, and be it enacted, with regard to any building, of whatever class, so far as relates to the modification of any existing lease or agreement for a lease being of the nature of a building lease, whereby any person may be bound to erect buildings, That notwithstanding any thing herein contained, if it be made to appear to the official referees that any rules by this Act prescribed will

prevent the due observance of or be at variance with any such lease or agreement, and that the objects of this Act may be obtained by modifying such rules either entirely or partially in conformity with such lease

to conform with the provisions of this Act, would be protected from any actions at the suit of any one or more of his lessees for so doing. Nevertheless, neither lessor nor lessee will be justified under this Act in altering or deviating from any current contract in any respect other than to accommodate it strictly to the legal provisions of this Act.

The main difference between this section and the ensuing (s. 10,) is, that this applies especially and solely to building contracts in actual operation, and to current building agreements; whereas the other (s. 10,) provides for buildings *in esse*, or rebuildings contingent upon leases or agreements either actually existing, or which may hereafter be entered into.

This clause affects policies of insurance, inasmuch as they are contingent building agreements, and that this Act compels all new buildings to be rebuilt in conformity with its regulations. But as in no case can the insured call upon the insurer for more than the actual amount of the policy, the clause (if any) binding a lessee to rebuild in case of fire becomes a building agreement between a lessor and lessee, and as such is capable of modification or arrangement between the parties, as provided for by sections 9 and 10 of this Act.

or agreement, then it shall be lawful for the said official referees by their award to authorize such modification, subject nevertheless to the approbation of the commissioners of works and buildings, and subject to such modification, or in default thereof it shall be the duty of such person so bound to erect buildings, and he is hereby required to erect every building agreed to be built by such lease or agreement, according to the conditions rendered necessary by this Act, in the same or like manner as if this Act had been passed and in operation at the time of making such lease or agreement, And that on the completion of such works, either according to the provisions of this Act or according to such modification aforesaid, and on giving to the lessor and other owners of such building fourteen days' notice of his intention to apply to the official referees on this behalf, it shall be lawful for the lessee or tenant, and he is hereby entitled to require the official referees to ascertain what loss present and prospective has been occasioned by the observance of the provisions of this Act, and having regard to the respective terms and interests of the lessee or tenant, the lessor and other owners of such building, and having regard to any profit, benefit or advantage, which may have accrued to such lessee or tenant since the execution of such lease or agreement, and which may appear to the said official referees not to have been in the contemplation of the parties to such lease or agreement at the time of such execution thereof as aforesaid, to determine whether he is entitled to any and what compensation, whether by payment of money or reduction of rent, or both, or otherwise; And that, on the receipt of such requisition, and on proof of due notice thereof having been given to the lessor and other owners of such building, it shall be the duty of such official referees, and they are hereby required to proceed to ascertain if any and what loss has been so occasioned, and having regard as aforesaid to such terms and interest as aforesaid, and to such profit, benefit, or advantage as aforesaid, to determine if any and what compensation as aforesaid is to be paid in respect thereof, and by whom the same is

*Buildings,
New and
Old.*

Application
to official re-
ferees.

Proceedings
thereon.

Buildings, New and Old. to be paid, and in what proportions, and their decision in the matter shall be final.

11.

Commissioners of works and buildings empowered to modify rules generally.

Report of official referees.

Extent of modification.

Representation by parties.

Order thereupon.

12.

Power to modify provisions of this Act as to existing buildings, to be rebuilt.

XI. And, for the purpose of preventing the express provisions of this Act from hindering the adoption of improvements, and of providing for the adoption of expedients either better or equally well adapted to accomplish the purposes thereof; Be it enacted, with regard to every building, of whatever class, so far as relates to the modification of any rules hereby prescribed, That if, in the opinion of the official referees, the rules by this Act imposed shall be inapplicable, or will defeat the objects of this Act, and that by the adoption of any modification of such rules, such objects will be attained either better or as effectually, it shall be the duty of such official referees to report their opinion thereon, stating the grounds of such their opinion, to the commissioners of works and buildings; And that, if on the investigation thereof it shall appear to the said commissioners that such opinion is well founded, then it shall be lawful for the said commissioners or any two of them to direct that such modification may be made in such rules as will, in their opinion, give effect to the purposes of this Act; And that, although such official referees shall be of opinion that such modifications are not requisite or admissible, yet if any party interested present to the official referees a representation setting forth the grounds whereon such modification is claimed, it shall be the duty of the official referees, and they are hereby required to report such representation, as well as their opinion thereon, to the said commissioners, with the grounds of such their report and opinion; And that thereupon, if the said commissioners think fit, it shall be lawful for them or any two of them to direct the official referees to make such order in the matter as may appear to them to be requisite.

XII. And be it enacted, with regard to buildings already built, so far as relates to the rebuilding thereof in conformity with this Act, in respect of the required area, or in any other respect than the required height and thickness of walls, That if a full compliance with the provisions of this Act be attended by great loss and

inconvenience, then, subject to the report of the official referees, and to the consent of the commissioners of works and buildings, and to such terms as the said commissioners may impose in that behalf, it shall be lawful for the parties concerned to rebuild such buildings on the site of the old buildings as near as may be practicable, but so that, nevertheless, both the party-walls and the external walls be of the required height and thickness.

XIII. And be it enacted, with regard to the works to be executed in pursuance of this Act, so far as relates to the supervision thereof by the surveyors, That two days before the following acts or events; that is to say—

Before any building shall be begun to be built; and also,

Before any addition or alteration which by this Act is placed under the supervision of the surveyor, shall be made to any building; and also,

Before any party-wall, external wall, chimney-stack or flues shall be begun to be built, pulled down, rebuilt, cut into, or altered; and also,

Before any opening shall be made in any party-wall; and also,

Before any other matter or thing shall be done which by this Act is placed under the supervision of the surveyor; except as hereinafter is provided,

It shall be the duty of the builder (by which term is to be understood, both in this provision and elsewhere throughout this Act, the master-builder or other person employed to execute any work, or if there be no master-builder or other person so employed, then the owner of the building, or other person for whom or by whose order such work is to be done), and he is hereby required to give to the surveyor, at his office, notice in the terms specified in the form (No. 1.) contained in the schedule of notices annexed to this Act, or to the like effect; And that if any builder neglect to give such notice, or begin to build, or do any of the things

The safest method of proceeding for all parties building is, to insert in the contract a condition as follows: "The building

Buildings, New and Old.

Builders.

13.

Works to be executed.

Notice to surveyors.

£20 penalty for neglect to give notice, &c.

Builders. aforesaid, before such notice, or before the expiration of such period of two days; then, in every such case, the party offending shall, for every such default, forfeit and pay to such surveyor, treble the amount of the fees which such surveyor would have been entitled to receive for his trouble in inspecting the same, and shall also forfeit for every such default, a sum not exceeding twenty pounds; And that if, for any period exceeding three months, any builder having duly begun any building, requiring compliance with the provisions of this Act, suspend the progress of such building, and again go on with the same; or if, during the progress thereof, the builder be changed; then, two days before such builder shall enter upon the performance of the work, it shall be the duty of such builder to give notice to the surveyor; and such notices must be in the terms specified in the forms (Nos. 2 and 3.) contained in the schedule of notices annexed to this Act, or to the like effect; and must be given to the surveyor, or left at the surveyor's office, in like manner as is required upon beginning any new building; And that if any builder make default or neglect to give or leave such notice, he shall forfeit for every such offence a sum not exceeding twenty pounds; And that if any such building, chimney or wall be begun to be built, pulled down, rebuilt, cut into or altered as aforesaid, or be proceeded with after any suspension of the progress thereof before such notice has been given; Or if such surveyor or the official referees be refused admittance to inspect the same premises, then such building or work shall be liable to be abated as a nuisance under the provisions herein contained: Provided always, that if by reason of any emergency any act, matter, or thing placed under the supervision of the surveyor be required to be done immediately, or before notice can be given to the surveyor, then it shall be lawful for the builder or any person to do such act, matter, or thing so requisite, but to be built in strict conformity with the provisions of the Building Act, and all notices to be given, all legal, and other forms complied with, and all fees paid by the builder."

£20 penalty for not giving fresh notices.

Penalty for beginning without notice;

or refusal to admit surveyor.

Emergency.

upon this condition, that within forty-eight hours after beginning to execute such work, notice thereof be given to the surveyor.

XIV. And be it enacted, with regard to such build- *Buildings*
ings and works, so far as relates to the supervision *Generally.*
thereof, That if in building, pulling down, rebuilding,
cutting into or altering any part of any building, or
party-wall or external wall, or chimney-stack or flue, *14.*
drains, cesspools, or any work or other thing be done *Supervision*
contrary to or not conformably with the rules and *of works.*
directions of this Act, then forthwith it shall be the *Notice of ir-*
duty of the surveyor and he is hereby required to give *regularities*
forty-eight hours' notice, according to the form (No. 4.) *to builders*
in the schedule of notices, or to the like effect, to the *and others.*
builder, foreman or principal workman on the premises,
to amend any such irregularity which he shall deem to
have been committed; and forthwith, after the expira-
tion of such notice, to proceed to inspect the work;
And that, if the work be so far advanced that he cannot *To cut into*
ascertain whether the irregularity has been committed *works.*
or not, or exists or not, then it shall be lawful for him,
and he is hereby empowered to order any work to be
cut into, laid open or pulled down, which shall in his
opinion prevent his ascertaining whether any such
irregularity exists or not; And that if, within forty-
eight hours, the builder to whom any such notice shall
have been given, refuse or fail to amend any irregular
work, or if any such builder, when ordered by the sur-
veyor, refuse to cut into, lay open or pull down any
work which shall in his opinion prevent his ascertaining
whether such irregular work exists or not, then, as soon
as conveniently shall be, it shall be the duty of the
surveyor to give information thereof to the official
referees; And that upon the receipt of such informa-
tion, it shall be the duty of such official referees, and
they are hereby required to proceed to hear the matter,
and if any breach of the rules, regulations and direc-
tions of this Act be found to have been committed, or if
there appear good reason to suppose any such breach
has been committed and is concealed, then it shall be
lawful for the official referees, and they are hereby

*Amendment
of works.*

*Proceeding
thereon by
official refe-
rees.*

Buildings Generally. authorized to direct by their award that such building, party-wall, external wall, chimney-stack, flue or other thing, or such part thereof as they shall deem necessary, shall be amended, removed, cut into, laid open, or pulled down; And that all the costs, charges and expenses of the said work, and of the said application to the official referees, shall be borne by such party or parties as the official referees shall determine.

Costs.

15.
Special supervision of first rate buildings of second class, and of buildings of third class.

Notice to official referees.

XV. And now, for the purpose of making provision for the supervision of buildings of the first rate of the second or warehouse class, and of all buildings of the third or public-building class, (except the buildings hereinbefore excepted); Be it enacted with regard to every such building, so far as relates to the special supervision thereof, That when all the walls of any such building shall have been built to their full height, and all the timbers of the floors, roofs and partitions shall have been fixed, it shall be the duty of the architect or builder, and he is hereby required, to give notice thereof to the official referees, according to the form (No. 6.) in the schedule of notices, or to the

If there be no architect or builder, then the owner of the building, or other person for whom or by whose order the work is done, must give this notice, (s. 13.)

Survey. like effect; And if the official referees be of opinion that such building is subject to the special supervision herein provided, then within seven days after such notice it shall be their duty to survey the said building;

Approval. And that, if they approve of the same, then within seven days after such survey, to certify such approval

Disapproval. under their hands to the architect or builder; Or that if any part of the walls, timbers, roof, or internal supports appear to such official referees defective, insufficient or insecure, then, within the said seven days after such survey, they are hereby required to give to such architect or builder notice of such parts as shall so appear to them defective, insufficient or insecure, which notice must be in writing; And that, upon the receipt of such notice, it shall be the duty of the said architect or builder, and he is hereby required to amend and strengthen such defective, insufficient or insecure parts; And that,

Amendment of defects.

during or within a period of seven days after notice has been given to the official referees that such works have been amended, or strengthened as aforesaid, it shall be the duty of the official referees, and they are hereby required to inspect the same, or in default thereof the said parts may be covered up; And that, upon completion of every such building, it shall be the duty of the architect or builder to give fresh notice to the official referees, according to the form (No. 7.) in the schedule of notices, or to the like effect; And that thereupon, or within seven days after such notice, it shall be the duty of the official referees to survey the same; And that, if upon such survey it shall appear that such building has been built sufficiently strong, and is sufficiently set to be safe, then within fourteen days after such survey it shall be their duty and they are hereby required to certify accordingly, which certificate must be under their hands and the seal of office of registrar of metropolitan buildings; And that, until such certificate shall have been made, or until fourteen days after such survey shall have elapsed without the official referees having given notice in writing that they are not satisfied, it shall not be lawful to use such building for any purpose whatever, without the express authority in writing of the official referees under their hands and the seal of office of the registrar of metropolitan buildings; And that, if before the certificate of satisfaction shall have been made, or if such further fourteen days as aforesaid shall have elapsed without due notice being given in writing as aforesaid, any such building subject to special supervision shall be used for any purpose, without such express authority in writing, then, on conviction thereof before two justices of the peace, the occupier of such building, or other the person by whom such building shall be so used, shall forfeit for such offence a sum not exceeding two hundred

Buildings Generally.
—
Notice of completion.
New survey.
Certificate.
Prohibition of use.
Penalty.

Under s. 67 of the former act, which contained a similar provision, it was held that the penalty was recoverable only against the master builder, and not against the owner (a); but

Buildings Generally.

Justices to consider circumstances.

16. Special supervision of buildings in Schedule (B. Part I.)

Survey by official referees.

Occasional inspection.

Notice of deficiencies.

Amendment of defects.

Approval by official referees.

pounds, for every day during which such building shall be so used, without having obtained such certificate of satisfaction, or such express authority as aforesaid; And that, in determining the amount of any such penalty, it shall be the duty of the justices, and they are hereby directed to have regard to the size and character of the building and to the nature and extent of danger involved in the use of such building, and to the amount of profit which might be derived from such use thereof.

in the former act, the owner was not alluded to distinctly as in this (s. 13), and he would be held liable to the penalty under this section if he ordered the works, and there were no architect or master builder employed.

XVI. And be it enacted, with regard to the buildings comprised in Schedule (B. Part I.) to this Act annexed, so far as relates to the supervision thereof, That before the builder begin to build the same, it shall be the duty of the architect or the builder and he is hereby required to give notice thereof to the official referees, and also, at the same time, to transmit for their inspection the plans, elevations and other drawings which have been made for the same; And that forthwith thereupon it shall be the duty of the official referees and they are hereby required to proceed to survey the situation of the intended building, with a view to ascertain whether such building can be erected on such situation with due regard to the security of the public; And that from time to time, during the progress of such building, it shall be the duty of such official referees and they are hereby directed to inspect the same with a view to ascertain the sufficiency thereof; And that if such building or any part thereof appear to such official referees defective, insufficient or insecure, then they are hereby required to give to such architect or builder notice of such parts as shall so appear to them defective, insufficient or insecure, which notice must be in writing; And that, upon the receipt of such notice, it shall be the duty of the said architect or builder, and he is hereby required to amend and strengthen such defective, insufficient or insecure parts; And that during or within a period of seven days after notice has been

given to the official referees that such works have been amended or strengthened as aforesaid, it shall be the duty of the official referees, and they are hereby required to inspect the same, or in default thereof, the said parts may be covered up; And that, upon completion of every such building, it shall be the duty of the architect or builder to give fresh notice to the official referees; And that thereupon, or within seven days after such notice, it shall be the duty of the official referees to survey the same; And that if upon such survey it shall appear that such building has been built sufficiently strong, then it shall be their duty to certify accordingly, which certificate must be under their hands and the seal of office of registrar of metropolitan buildings; And that, until such certificate shall have been made, or until fourteen days after such survey shall have elapsed without the official referees having given notice in writing that they are not satisfied, it shall not be lawful to use such building for any purpose whatever, without the express authority in writing of the official referees, under their hands and the seal of office of the registrar of metropolitan buildings; And that if, before the certificate of satisfaction shall have been made, or if such fourteen days as aforesaid shall have elapsed without due notice in writing being given as aforesaid, any such building subject to special supervision shall be used for any purpose, without such express authority in writing, then, on conviction thereof before two justices of the peace, the occupier of such building, or other the person by whom such building shall be so used, shall forfeit for such offence a sum not exceeding one hundred pounds, for every day during which such building shall be so used without having obtained such certificate of satisfaction, or such express authority as aforesaid; And that, in determining the amount of any such penalty, it shall be the duty of the justices, and they are hereby directed to have regard to the nature and extent of danger involved in the use of such building, and to the amount of profit which might be derived from such use thereof.

*Buildings
Generally.*

Notice of
completion.

New survey.

Certificate.

Prohibition
of use.

Penalty.

Justices to
consider cir-
cumstances.

*Buildings
Generally.*

17.

Entry on
premises.

Refusal to
permit in-
spection.

Forcible
entry.

18.

All buildings
not accord-
ing to this
Act declared
a nuisance.

XVII. And be it enacted, with regard to buildings and works, so far as relates to the entry thereon for the supervision thereof, That, at all times during the progress of any operations in respect thereof within the meaning of this act, it shall be lawful for the surveyor, and for the official referees, and they are hereby respectively authorized to enter upon the premises upon which such operations have been commenced; And that if at any time whilst any building is in course of construction, demolition, alteration or re-construction, any person refuse to admit the surveyor, or the official referees authorized under this Act, during the customary working hours, to inspect such building, or any person refuse or neglect to afford such surveyor or official referee every assistance which may be reasonably required in and about such inspection, then in every such case, on conviction thereof, the party offending shall forfeit for every such offence a sum not exceeding twenty pounds; And that if at any time during such customary working hours the surveyor or the official referees be refused admittance to make inspection of any work, then for that purpose it shall be lawful for such surveyor or for such official referees, and they are hereby empowered, accompanied by a peace officer, to enter upon the ground, building and premises where the same shall be.

XVIII. And for the purpose of more effectually enforcing the observance of the provisions of this Act, Be it enacted, with regard to any buildings, drains, timber buildings, chimneys and flues, party-walls, party-fence-walls, external walls and projections, and every other part of every building of every class, or rate of any class, which shall be hereafter built, rebuilt, enlarged or altered within the limits of this Act, contrary to the provisions hereof, so far as relates to the removal thereof, That if the same be not built, rebuilt, enlarged or altered in the manner and of the materials and in every other respect according to, and in conformity with, the several rules and directions which are in this Act particularly specified; And if any person build or begin to build, or cause the building or begin-

ning to build, or alter or cause to be altered, or use or cause to be used any part of any ground or building, projection, drain or other thing contrary thereunto; and if, in either of such cases, it so appear by the certificate of the official referees; then the said building, projection, drain or other thing, or such part thereof so irregularly built or begun to be built, or so irregularly altered or begun to be altered, or so used, shall be deemed a nuisance; And that thereupon it shall be the duty of the surveyor, and he is hereby directed to summon the builder before any two justices of the peace; And that if, at the time and place appointed on such summons, such builder fail to appear, then it shall be lawful for the said justices, and they are hereby authorized to issue a warrant under their hands and seals to compel such builder to appear before such justices or any other two justices: And that thereupon it shall be the duty of such builder, and he is hereby required to enter into a recognizance in such sum as the said justices shall appoint, for abating and taking down the same within such convenient time as the said justices shall respectively appoint, or otherwise for amending the same according to such rules and directions as are herein contained, and also for paying the costs, charges and expenses incurred by the surveyor in laying the information and obtaining the conviction, including such compensation for the surveyor's loss of time as the said justices shall think fit; And that if the party so required fail to enter into such recognizance, then it shall be lawful for either of such justices or any justice, and they are hereby required to commit such builder to the common gaol of the city, county or liberty where the offence shall be committed, there to remain without bail or mainprize until he shall have entered into such

*Buildings
Generally.*

Summons
before jus-
tices.

Compulsory
appearance.

Recogni-
zances to
pull down
and amend.

Under s. 60 of the former statute the conviction before the justices must have been within three calendar months of the building having been completed, but though that period had expired without any conviction being had, yet the building was not rendered legal, but might still be proceeded against. (*Titterton v. Conyers*, 5 Taun. 465; 1 Marsh. 140.) This clause contains no such definite proviso with regard to time.

Imprison-
ment.

Buildings recognition as aforesaid, or until such irregular building shall have been abated or demolished or otherwise amended, or such nuisance shall be abated or demolished by order of such justices respectively, (which order the said justices are hereby empowered to make,) and until the costs, charges and expenses thereof, and of all operations and proceedings in relation thereto, shall have been paid : And further, That if application be made to any two or more justices, then, thereupon, it shall be their duty, and they are hereby empowered to order the surveyor or any other person to abate or demolish such nuisance, and to order the persons authorized by them so to abate or demolish the same, to sell and dispose of the materials thereof, and, out of the moneys arising by such sale, to pay to themselves, and all persons by them employed for such purpose, the reasonable charges for abating or demolishing such nuisance, and also such costs and expenses as aforesaid, and to pay the surplus moneys arising by such sale (if any) to such owner of the building as the official referees shall determine to be entitled thereto ; And that if the moneys arising by such sale be not sufficient to pay such charges, then it shall be the duty of the person entitled to the immediate possession of such building, or the occupier, to make good the deficiency subject to reimbursement as hereinafter provided ; and if he fail, then he shall be liable to the same remedies for the recovery thereof as are by this Act provided concerning the expense of taking down ruinous buildings, and putting up hoards for the safety of passengers.

Removal of
buildings de-
clared nui-
sances.

Expenses.

19.
Fifty shil-
lings penalty
on workmen
offending.

XIX. And be it enacted, with regard to any building or work, so far as relates to the non-observance of the provisions of this Act in that behalf by workmen and others, That if any workman, labourer, servant or other person employed in any building, or in the alteration, fitting up or decoration of any building, wilfully and without the direction, privity or consent of the person causing such work to be done, do anything in or about such building contrary to the rules and directions of this Act, then upon conviction thereof before any two justices of the peace, upon the oath of one or more

credible witness or witnesses (which oath the said justices are hereby empowered and required to administer), every such offender shall be liable to forfeit for every such offence a sum not exceeding fifty shillings; And that if upon or immediately after such conviction, any such forfeiture be not paid, then it shall be the duty of any two justices of the peace to whom application shall be made, to commit the offenders by warrant under the hand and seal of such justices to the common gaol for any term not exceeding one month, at the discretion of such justices.

*Buildings
Generally.*

*Imprison-
ment.*

XX. And forasmuch as, from time to time, occasion hath arisen and will hereafter arise to execute the following works in relation to adjoining buildings and premises, parted by the same party-wall or party-fence-wall, but belonging to different owners, or occupied by different persons, or to buildings intermixed, belonging to different owners, or occupied by different persons; namely,—

*Adjoining
Properties.*

20.

*Party Walls.
Party
Fences.
Intermixed
Buildings.*

*Execution of
works.*

The reparation of the party-walls by which such premises shall be parted :

The pulling down and rebuilding of such party-walls :

The raising of such party-walls :

The reparation of party-fence-walls :

The rebuilding of such party-fence-walls :

The raising of such party-fence-walls :

The pulling down of timber partitions which part buildings, the property of different owners, or occupied by different persons, and building in lieu thereof proper party-walls :

The pulling down of buildings built over public ways, or having rooms or stories, the property of different persons, or occupied by different persons, lying intermixed, for the purpose of building proper party-walls or party-arches :

And generally the performance of other necessary works incident to the connection of such party-walls or party-fence-walls with the premises adjoining : It is expedient to make provision, as well for facilitating the execution of such works by any such owner desirous to execute

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

the same (who is herein denominated the "building-owner"); as for protecting the interests of the owner of the adjoining premises (who is herein denominated the "adjoining owner"); Now for that purpose, Be it

enacted, with regard to all premises parted by a party-wall or party-fence-wall, or parted by timber partitions, and with regard to all intermixed properties not so parted, so far as relates to the execution of any such works by any owner of any such premises, That if the adjoining owner shall have consented thereto, or if, without such consent, the required notice of such work shall have been given by or on the part of the building-owner to such adjoining owner, then, subject to such modification as shall be made by virtue of the provision in that behalf; and subject to the provision for supplying the want of consent of the owners; and subject moreover to the respective conditions hereby prescribed, with regard to such works respectively, as well as to the payment of the costs of such works, and to the sanction or to the award of the surveyors or of the official referees, as hereby prescribed in reference thereto, it shall be lawful for every such building-owner and he is hereby authorized or required to execute such works.

21.
Consent of,
or notice to,
adjoining
owner.

XXI. And be it enacted, with regard to such works, so far as relates to the notice thereof, That unless the adjoining owner consent thereto, it shall not be lawful for the "building-owner" to execute such works, until he have given notice thereof to such "adjoining owner;" And every such notice, with regard to the pulling down, rebuilding or repairing of party-walls

A public Building Act is not to be deemed to be superseded or suspended by any local act. When therefore, a Company duly authorized by act of parliament had pulled down a house adjoining to that belonging to the plaintiff, and on finding the party-wall deficient, had given the usual notice, &c., it was held that the plaintiff had no right to compensation as for an injury sustained under the operation of the local act.—*Rex v. Hungerford Market Company*, 2 N. & M. 340.

With respect to this notice, it is not necessary where there are several "owners" of intermediate improved rents, &c. to serve them all. A notice served on the receiver of the rack-rent—

or party-fence-walls, must be given three months, at the least, before the work is to be commenced; And every such notice, with regard to the pulling down and rebuilding intermixed

that is on the immediate land- *Party*
lord of the occupier—will be suf- *Walls.*
ficient (s. 112). And the occu- *Party*
pier is moreover bound to furnish *Fences.*
the name and residence of such *Intermixed*
landlord, when required so to *Buildings.*
do (s. 112).
—

walls and timber partitions, must be given three months, at the least, before such work is to be commenced; And every such notice must be in the form or to the effect of the notice (No. 8.) for that purpose contained in the schedule of notices hereunto annexed.

XXII. And be it enacted, with regard to every such work, so far as relates to the modification thereof, in order to render it suitable to the premises of the adjoining owner or his tenant, That if the adjoining owner, at any time within two months after the receipt of the said notice from the building-owner, give notice of his desire that any modification be made in the work so as to render it suitable to his premises, according to the form (No. 18.) in the schedule of notices, or to the like effect, then, within seven days after the receipt of such notice, it shall be the duty of the building-owner, and he is hereby required, to signify his consent to, or dissent from, such modification or delay; And that if the building-owner dissent from or do not within such seven days signify his consent to such modification, then it shall be lawful for the adjoining owner, and he is hereby entitled, to require the building-owner not to commence the work until the official referees shall have determined thereon; And that if within seven days thereafter application be made in writing to the official referees, according to the form (No. 19.) in the schedule of notices, or to the like effect, and notice thereof be given to the building-owner, according to the other form (No. 20.), then, within ten days after such application, it shall be the duty of the official referees to signify their decision thereon, and it shall be the duty of the building-owner not to commence the work till the decision of such official referees shall have been given; And that if, within the period of three months from the date of the

22.
Modification
of work to
suit adjoining
owner.

Modification
of opera-
tions.

Application
to official
referees.

Authority to
build.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

first notice, such adjoining owner do not make any objection or any requisition in conformity with this enactment, then, subject to the provisions of this Act with regard to such works, it shall be lawful for the building-owner, and he is hereby authorized to proceed to execute the same.

23.

*Delay of
work to suit
adjoining
owner.*

XXIII. And be it enacted, with regard to every such work, so far as relates to the modification thereof, in order to render it suitable to the premises or to the convenience of the adjoining owner or his tenant, That if the adjoining owner at any time within three months after the receipt of the said notice from the building-owner, give notice of his desire that the work be delayed, so as to cause it to be executed at a more seasonable or a more convenient time in reference to the business, or to the family or domestic arrangements of such adjoining owner or his tenants, according to the form (No. 18.) in the schedule of notices, or to the like effect; then, within seven days after the receipt of the notice thereof, it shall be the duty of the building-owner, and he is hereby required to signify his consent to, or dissent from, such modification or delay; And that if the building-owner do not within such seven days signify his consent to such modification or delay, then it shall be lawful for the adjoining owner, and he is hereby entitled, to require the building-owner to delay the work until the official referees shall have determined thereon; And that if within seven days thereafter application be made in writing to the official referees, according to the form (No. 19.) in the schedule of notices, or to the like effect, and notice thereof be given to the building-owner, according to the other form (No. 20.), then within ten days after such application it shall be the duty of the official referees to signify their decision thereon, and it shall be the duty of the building-owner to delay the same till the decision of such official referees shall have been given; And that if, within the period of three months from the date of the first notice, such adjoining owner do not make any objection or any requisition in conformity with this enactment, then, subject to the provisions of this Act

*Delay of
operations.*

*Application
to official
referees.*

*Authority to
build.*

with regard to such works, it shall be lawful for the building-owner and he is hereby authorized to proceed to execute the same.

XXIV. And be it enacted, with regard to any such works hereby authorized to be done in relation to party-walls, party-arches, party-fence-walls, or other such structures, belonging to the owners of adjoining buildings or parting adjoining premises, so far as relates to supplying the want of consent of the adjoining owners, That if the adjoining premises be unoccupied, or if the owner thereof cannot be found, or if the owner, although found, cannot, by reason of legal disability or otherwise, consent to the work, or if the owner will not consent thereto, or if differences arise amongst the parties concerned, then the notice required to be given in respect of such work must be served both on the surveyor and on the official referees, in addition to such other parties entitled to notice under this Act upon whom such notice can be served, which must be according to the form (No. 9.) in the schedule of notices, or to the like effect; And that forthwith, on the receipt of such notice, it shall be the duty of the surveyor and he is hereby required to give notice to the parties by whom such work is to be executed, and to any one or more surveyors or other agents by them appointed, as to the day and hour when he will view the premises, according to the form (No. 10.) in the schedule of notices, or to the like effect; and at such time it shall be the duty of the surveyor of the district and he is hereby authorized to proceed to inspect such premises accordingly, and to certify to the official referees,

First, Whether such work ought to be done or not; and

Secondly, If the same ought to be done, whether it ought to be done in the proposed manner; and

Thirdly, The site whereon the party-wall should be built; and with regard to intermixed buildings, what party-arches may be necessary over or under any rooms of such buildings so intended to be rebuilt; and

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

—
24.

Supplying
want of con-
sent of ad-
joining own-
ers.

Notice of
inspection
by surveyor.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

Fourthly, The quantity of the soil or ground or other parts of the premises (if any) necessary to be laid to or taken from the house of the person desirous to rebuild, to the house of the person permitting him to erect a party-wall or party-arch; and

Fifthly, The compensation (if any) which should be made and paid by either the building-owner, or the adjoining owner, to the other bound to pay all expenses, even in lieu of the lessening although the consent of the adjoining owner is obtained by buildings by such compulsion.

party-wall or party-arch, or as a satisfaction for such other injury (if any) as shall be done or occasioned thereby to any of the said parties;

Notice to parties.

And that, upon the receipt of such certificate, it shall be the duty of the official referees, and they are hereby required, to cause notice thereof to be given to the parties or to such of them as are known; And that if within seven days after such notice to the parties, the certificate be not appealed against, and if the official referees be of opinion that the work is proper to be done, and the compensation is fair, then it shall be lawful for the official referees to confirm such certificate, and to authorize the building-owner to proceed with the works, as if the consent of the adjoining owner had been obtained; And that if any party concerned shall appeal against the certificate of the surveyor as to the work to be done, or as to the compensation, or as to any other matter referred to in such certificate, in pursuance of the above provisions, then it shall be the duty of the official referees, and they are hereby required to appoint one of their number to survey the building in question; And that for that purpose it shall be the duty of the official referee so appointed, and he is hereby required to give notice to the parties, and to any one or more surveyors or other agents by them appointed, as to the time when he will view the premises; And that at such time it shall be the duty of such referee, and he is hereby authorized to view such premises

Confirmation by official referees.

Proceedings on appeal against certificate.

Notice by official referees.

Survey.

accordingly, and to inquire into the matters appealed against, and to certify to the official referees his opinion thereon; And that, upon such certificate being made, it shall be lawful for the official referees to make their award, thereby either confirming, or reversing or modifying, as to them the case may seem to require, the certificate of the surveyor, and appointing by whom and in what proportions the expenses of the surveys and of the reports thereon are to be paid; and such award shall be final and conclusive; And with regard to any works by such award authorized, so far as relates to the proceedings of the building-owner, That if, upon the making of the award, the periods of the notices by this Act prescribed with regard to works of that nature have elapsed, then immediately upon the making of the award, but if such periods have not elapsed, then as soon after the making of the award as such periods shall have elapsed, it shall be lawful for the building-owner, his agents, servants and workmen, to proceed to execute the works.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

—
Award.

Works
authorized.

XXV. And be it enacted, with regard to any party-wall, party-arch, or external wall used wholly or in part as a party-fence-wall, so far as relates to the reparation and rebuilding thereof, at the joint expense of the owners of the buildings parted thereby, That if such party structure be so defective or so far out of repair as to render it necessary to pull down and rebuild the same, or any part thereof, then, on notice being given by the owner of one of the buildings to the adjoining owner, according to the form (No. 8.) in the schedule of notices, or to the like effect, it shall be lawful for the building-owner to require a survey, certificate and award authorizing the execution of such reparation or rebuilding, according to the provisions hereinbefore contained in that behalf.

25.

Reparation
and rebuild-
ing at joint
expense.

But if the wall be not so ruinous as to require immediate repair or rebuilding, and if the official referees do not certify to that effect, the expense must be borne altogether by the party requiring such repair or rebuilding.

XXVI. And be it enacted, with regard to sound party-walls, so far as relates to the rebuilding thereof, at the expense of the building-owner, That if the owner

26.

Rebuilding
of party-
walls.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

of one of the buildings desire to rebuild such party-wall, then, on giving to the adjoining owner the required notice of three months, according to the form (No. 14.) in the schedule of notices, or to the like effect, it shall be lawful for such building-owner, and he is hereby entitled to pull down and rebuild such party-wall; but upon condition that he do reinstate and make good all the internal finishings and decorations of the adjoining premises, and pay all the costs and charges thereof, and also all the expenses incidental to the execution of the work, including therein the fees and expenses of the survey, and the fees of the surveyors and any fees in respect of any services performed by the official referees, and also such reasonable compensation as to the said official referees may seem proper for any loss which the adjoining owner shall have incurred by reason of such work.

27.
Rebuilding a
party-wall.

XXVII. And be it enacted, with regard to any party-wall so far as the rebuilding thereof, That if the owner of one of the buildings parted by such party-wall rebuild such building of a higher rate, and do not pull down such party-wall and build a proper wall in lieu thereof, then it shall be his duty, and he is hereby required, to build up an external wall against such party-wall.

Building of
an external
wall against
a party-wall.

28.
Damage
arising from
erection of
external wall
against a
party-wall.

XXVIII. And be it enacted, with regard to an external wall built against a party-wall, so far as relates to the operations incident thereto, and to the making good any damage occasioned thereby, That if it be necessary to excavate or dig out the ground against the wall of any adjoining building, for the purpose of erecting a wall thereon, or for any other purpose, then it shall be lawful for the building-owner and he is hereby entitled so to do; but upon condition that the said building-owner do, at his own costs, shore up and underpin such wall, or such part thereof, to its full thickness, and to the full depth of such excavation, with good sound

If the "adjoining owner," or occupier, employ workmen to shore up his own house, it would appear that he does so at his own risk and expense,^(a) unless he can prove that the shoring, &c.,

(a) *Robinson v. Lewis*, 10 East, 227.

stock-bricks and tiles or slates bedded in cement, or with other proper and sufficient materials; such underpinning to be done in a workmanlike and substantial manner; And that if, for the purpose of erecting such external wall, it be necessary to cut away part of the footings of such party-wall on the side next to the wall so to be built, and any part of the chimney-breasts and chimney-shafts belonging to the building about to be rebuilt, as shall project beyond the perpendicular face of such party-wall, in the lowest floor thereof, then, on giving notice of such intention in writing to the owner of the adjoining building, at least one month before commencing operations, according to the form (No. 15.) in the schedule of notices, or to the like effect; and on the expiration of such notice, it shall be lawful for the building-owner and he is hereby authorized to cut away such portion of the footings, breasts and chimney-shafts aforesaid; but so that the same be done, and the brick-work where cut be again made good in cement, under the superintendence and to the satisfaction of the surveyor.

XXIX. Provided always, and be it enacted, with regard to such party-wall, so far as relates to the making good of any such damage, That if it be so damaged and injured by such cutting away, as in the opinion of the adjoining owner or occupier to be ruinous or dangerous, then, upon application for that purpose, it shall be the duty of the surveyor, and he is hereby required to survey such wall; And if upon the survey thereof it be found ruinous or dangerous, then to condemn it; And that, thereupon, it shall be the duty of the building-owner to pull down and rebuild such party-wall; And that if, in the opinion of the surveyor or of the official referees, such damage or injury

of the building-owner be insufficient, and this it would seem can only be done by reference to the district surveyor, or the official referees. But the building-owner is clearly liable for all damage arising from improper shoring, &c., on his part. And further, it would appear that the compensation for such damages would go to the lessee under covenant to repair, or to the lessor in default of any covenant; but in either case, such compensation must be expended on the purpose for which it is awarded.

Party Walls.
Party Fences.
Intermixed Buildings.

—
Cutting into footings and chimneys.

29.
Making good such damage.

Survey.

Damage from carelessness.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*
—

Rebuilding.

shall have been occasioned by want of due care on the part of the building-owner, then it shall be the duty of such building-owner and he is hereby required to pull down and rebuild such party-wall; and that at his own costs and charges, including therein all the costs and expenses incident to such survey, and the pulling down and rebuilding of such party-wall, and the reinstating and making good all the internal finishings and decorations damaged thereby; And that if the owner of the building to be rebuilt do not proceed with all due despatch to pull down and rebuild such party-wall, and to reinstate and make good all the internal finishings and decorations of the adjoining premises, and to pay the costs and charges and expenses of the survey, then it shall be lawful for the adjoining owner so to do, and he is hereby entitled to recover all the costs and expenses in respect thereof from such owner, his heirs, executors, administrators or assigns.

30.
Rebuilding
of sound
party-walls.

XXX. And be it enacted, with regard to any sound party-wall against which an external wall shall have been built, and which shall have been suffered to remain so far as relates to the rebuilding thereof, That if, while such party-wall continues sound, the adjoining building be pulled down or rebuilt, and such party-wall be pulled down, then the owner of such adjoining building shall not be entitled to more than his just proportion of the materials thereof, nor to more than his just proportion of the ground on which such party-wall was built, nor shall he build on more than his just proportion of the said ground, unless he shall have agreed with and satisfied the owner of the building so previously rebuilt for his half thereof; And that if the said owners cannot agree concerning the division of such materials, or of such ground, or of the building thereon, or concerning the reimbursement of the party first rebuilding as aforesaid, then the price and all matters in difference, including the sale and purchase of the ground in question, shall be settled by a reference to the official referees, whose award shall be final.

Reference to
official re-
ferees.

31.
Raising of
future build-
ings.

XXXI. And be it enacted, with regard to every building hereafter built, so far as relates to the raising

thereof, That it shall be lawful to raise any building, but *Party Walls.*
 so that, nevertheless, the party and external walls and *Party*
 chimneys thereof, when so raised, be of the materials *Fences.*
 and of the several heights and thicknesses hereinbefore *Intermixed*
 described for party and external walls and chimneys of *Buildings.*
 the rate such building shall be of when so raised; And
 with regard to buildings already built, so far as relates *Existing*
 to the raising thereof, that, although the walls of such *buildings.*
 buildings be not of the thicknesses prescribed by this
 Act, if, in the opinion of the surveyor, such walls be
 sufficiently secure to allow of the raising thereof, then
 it shall be lawful to raise any such building already
 built to an additional height, not exceeding ten feet;
 And with regard to any building adjoining one which *Chimney of*
 shall be raised, so far as relates to the raising of the *adjoining*
 chimneys thereof, that if any building be raised, it shall *buildings.*
 be the duty of the owner of such building, and he is
 hereby required to build up, at his own expense, the
 party-walls between his own and any adjoining build-
 ing, and all flues and chimney-stacks belonging thereto;
 And with regard to any building raised, so far as re- *Use of*
 lates to the use thereof by the adjoining owner, that if *raised build-*
 at any time the owner of any such adjoining building *ings.*
 make use of any portion of the part raised of such
 party-wall by building against it, or otherwise it shall
 be lawful for the owner of the premises so first raised,
 to claim, and he is hereby entitled to recover the cost
 of a proportionate part of the portion which shall be so
 used, together with the cost of such parts of the chim-
 ney-stacks as belong thereto.

XXXII. And be it enacted, with regard to party- *32.*
 fence-walls, by which term is to be understood any *Repairing*
 boundary-wall parting the grounds belonging to differ- *and rebuild-*
 ent owners, or occupied by different persons, so far as *ing of party-*
 relates to the reparation and rebuilding and raising *fence-walls.*
 thereof, That if the owner of any of the premises parted
 thereby give one month's notice of his intention to the
 adjoining owner to repair, pull down and rebuild the
 same, it shall be lawful for him so to do; and if the
 wall be below the height of nine feet from the ground
 on either side, then either to raise it to that height, or

Party Walls. to pull it down and to rebuild it to that height; but upon condition that he do pay all the expenses thereof;
Party Fences. And that if a building be to be erected against such
Intermixed Buildings. party-fence-wall, and such wall be not conformable to the requisites prescribed for a proper party-wall for a building of that class and rate, then it shall be lawful for the building-owner, and he is hereby entitled to pull down such party-fence-wall; but upon condition that he do pay all the expenses thereof; and also that he do make good every damage which shall accrue to such adjoining premises by such rebuilding: Provided always, with regard to the expense of so pulling down such party-fence-wall, and rebuilding the same, That if thereafter the adjoining owner use such party-fence-wall for any purpose to which, if it had not been pulled down and rebuilt, it would not have been applicable, then to such extent as such adjoining owner shall so use such wall, the building-owner shall be entitled to be reimbursed the expenses of so pulling down and rebuilding such wall: Provided also, with regard to any such party-fence-wall, so far as relates to the limitation of the height thereof, That if any party desire to raise such wall so as to screen from view any offensive object or neighbourhood, then on application to the official referees, it shall be lawful for them to authorize such work, but not so as to obstruct the free circulation of the air, or to injure the property adjoining to or in the neighbourhood of such wall.

Reimbursement of expense of operations.

Limitation of height of screen walls.

33. XXXIII. And be it enacted, with regard to the party timber partitions of existing buildings belonging to different owners, so far as relates to the pulling down thereof, and any wall under or over the same, That if one of the buildings be rebuilt, or if one of the fronts of any such building be taken down to the height of one story, or for a space equal

Pulling down party timber partitions.

That is to say, of existing buildings subject to the provisions of leases granted before the coming into operation of this act. The responsibilities of the various parties to leases granted subsequently to the 1st January, 1845, are clearly set forth in sect. xlix. p. 57. It is, therefore, important to consider here, how owners in various degrees will be bound to contribute their several pro-

to one-fourth of such front from the level of the second floor upwards, then, without the consent of the adjoining owner, but upon giving the requisite notice, according to the forms, (Nos. 11, 12, 13.) in the schedule of notices, or to the like effect, it shall be the duty of the building-owner, and he is hereby required, to pull down such timber partitions, and the walls under or over the same, and in lieu thereof to build a proper party-wall; and that at the expense of the owners of all the premises parted thereby.

portions, or how they will be absolved. The law in this respect is clearly laid down in many cases arising out of the late act, and these may by analogy be safely adopted as precedents under the present statute. *Party Walls. Party Fences. Intermixed Buildings.*

The owner of the improved rent, not of the ground rent, is liable to pay the expenses of a party-wall (a). But where there is no improved rent, or, in other words, no transfer, the freeholder building on his own ground, then he becomes the "owner" to the full extent and meaning of this clause, and being lessor of the house at a rack-rent (there being no other person entitled to any kind of rent) is liable to contribute to the expenses of a party-wall under the statute, though the lessee has improved the house demised (b).

In like manner a lessee for twenty-one years at a peppercorn rent for the first half year, and a rack-rent for the rest of the term, who, by agreement, was to put the premises in repair, and covenanted to pay the land tax, and all other taxes, rates, assessments, and impositions, having assigned his term for a small sum in gross, was held not to be liable to pay the expense of a party-wall, either by the provisions of the statute, for he was not the owner of an improved rent, or by the covenant; therefore that charge must in such case be borne by the original landlord (c). Although, if a large sum (as 300*l.*) were paid to an original lessee for a lease, he would be liable (d).

This enactment was intended to throw that burden on persons to whom long leases had been granted, with a view to an improvement of the estate, and who afterwards underlet at a considerable increase of rent (e).

The assignee of the lessee of premises, at a fixed rent, which he (the assignee) considerably improved, and thereby rendered of greater annual value, is not the owner of the improved rent within the statute, so as to render him liable to expenses of party-

(a) *Peck v. Wood*, 5 T. R. 130.

(b) *Beardmore v. Fox*, 8 T. R. 214.

(c) *Southall v. Ledbetter*, 3 T. R. 458.

(d) *Stuart v. Smith*, 2 Marsh, 435; 7 Taun. 158; Holt, 321.

(e) *Southall v. Ledbetter*, *sup.* Ashurst, J.

Party
Walls.
Party
Fences.
Intermixed
Buildings.
—

walls (*f*). But if the lessee of a house at a rack-rent, underlets it at an advanced rent, he is liable to contribute to the expenses of a party-wall built under the statute; nor is the operation of the statute at all varied by any covenants to repair entered into between the landlord and his tenant (*g*).

A tenant re-building a house without a lease, or agreement for a lease, and making use of the adjoining party-wall, is not the party liable to pay for the same as owner of the improved rent, nor can he be sued as such, even although he afterwards obtain in consideration of the re-building, a beneficial lease at a low ground rent dated previously to such re-building (*h*).

A. having taken a lease of land from *B.*, entered into an agreement with *C.*, that he should be employed by him (*A.*), to build certain houses, he (*C.*), taking such houses again from *A.* at a rent of 20*l.* per annum: *A.* was held liable to contribute to the party-wall to which the houses were attached (*i*).

A lessee covenanting to pay a reasonable proportion of supporting and repairing all party-walls, &c., and to pay all taxes, duties, assessments, and impositions, parliamentary and parochial, is liable under this statute (*j*).

An executor or administrator may be liable under this statute as the owner of the improved rent, even though he has no other assets than the improved rent (*k*). And, therefore, in an action to recover expenses incurred under the Act, a plea, that the defendant is only entitled to the improved rent as executor, and that bonds are outstanding, and *plene administravit præter* a sum insufficient to pay the demand, was held bad on demurrer (*l*).

The owner of an improved rent was not entitled to compensation for the use of a party-wall under 14 Geo. III. Therefore, where a tenant of premises having built a party-wall thereon, let a portion of them upon a building agreement for 50*l.* a year, and the sub-tenant built a house on his part of the ground, and in so doing made use of the party-wall,—the agreement containing no stipulation in case of this being done,—and eventually underlet the house, when finished, at a rent exceeding 50*l.*:—Held, that the original tenant was not entitled to compensation from his lessee, under the statute, for the use of the party-wall, since he himself, and not the sub-tenant, was the owner of the improved rent within that clause (*m*).

Where a very old house is demised, with the usual covenants to repair, it is not meant that the house should be restored in an

(*f*) *Lamb v. Hemans*, 2 B. & A. 467.

(*g*) *Sangster v. Birkhead*, 1 B. & P. 303.

(*h*) *Taylor v. Reed*, 6 Taun. 249.

(*i*) *Collins v. Wilson*, 4 Bing. 551; 1 M. & P. 454.

(*j*) *Barrett v. Bedford (Duke)*, 8 T. R. 602.

(*k*) *Thackar v. Wilson*, 4 N. & M. 659; 3 Ad. & E. 142.

(*l*) *Wilcox v. Newman*, 1 Chit. 132.

(*m*) *Williams v. Pocklington*, 2 B. & Ad. 886.

improved state (*n*). Therefore, under the compulsory clauses of this *Party* Act, such a tenant would not be held liable for the expenses of *Walls*. a party-wall, as that is deemed an improvement by the Act. If *Party* the plaintiff bring an action on a general covenant to repair *Fences*. a messuage, and assign a breach thereof, whereby he was put to *Intermixed* expense, it is sufficient for a tenant to plead performance of all, *Buildings*. except as to the repairs of a party-wall, and that these repairs
—

Where *A.*, a builder, proposed to *B.*, the occupier of an adjoining house, to build a party-wall, and stated the expense; *B.* answered, "Very well, I expect to pay what is right and fair," and the wall was built:—Held, that *A.* was entitled to recover from *B.*, his share of the expense, without reference to the statute (*p*). Probably, under the statute, had it been necessary to have had recourse to it, he would not have been able to recover, from a neglect of the required preliminaries.

A written consent of the owner under this Act will be the safest, both on account of the certainty of such a document and its facility of proof.

XXXIV. And be it enacted, with regard to build- 34.
ings built over public ways, or having rooms or stories, Pulling
the property of different persons, lying intermixed (ex- down inter-
cept inns of court hereinafter provided for), so far as mixed build-
relates to the pulling down and laying the parts thereof ings.
to each other, That if a party-wall or party-arch cannot be built without pulling down such buildings, and so laying parts thereof to each other, and if, in default of the consent of all proper parties, the official referees authorize such works, then it shall be lawful for the owner of either of the said buildings to execute the same; but so that the party-walls or party-arches be conformable to the provisions of this Act, and the directions of the said official referees in their award made in that behalf.

XXXV. And be it enacted, with regard to the 35.
rooms or chambers in the inns of court, (that is to say) Inns of
in Serjeants' Inn, Chancery Lane, or in any of the courts,
four inns of court, or in any of the inns of chancery, or chambers,
&c.

(*n*) *Gutteridge v. Munyard*, 7 C. & P. 129; 1 M. & Rob. 334.

(*o*) *Moore v. Clark*, 5 Taun. 90.

(*p*) *Stuart v. Smith*, 2 Marsh. 435; 7 Taun. 158; Holt, 321.

*Party
Walls.**Party
Fences.**Intermixed
Buildings.*

any other inns set apart for the study or practice of the law, and with regard to other buildings divided into rooms or chambers, offices or counting-houses, let out or to be let in separate suites or sets, so far as relates to the building of party-walls, That the walls or divisions between the several rooms and chambers in such inns, or such buildings, belonging to and communicating with each separate and distinct staircase, shall be deemed to be party-walls within the meaning of this Act and as such must be built in conformity with the regulations and clauses herein contained relating to party-walls.

36.

Power of
of entry on
premises to
effect works.

XXXVI. And for the purpose of facilitating and regulating the execution of any works authorized by this Act, or by any award in pursuance thereof, in respect of any party-wall or party-arch, parting the buildings or grounds belonging to different owners, or in the occupation of different persons, or in respect of intermixed buildings; Be it enacted, with regard to any such works, so far as relates to the power to enter the adjoining premises in order to execute the same, That if such work have been duly authorized, either by the consent of the parties competent to give such consent, or by the award or certificate of the official referees, then, at any time between the hours of six in the morning and seven in the afternoon (Sundays excepted), it shall be lawful for the building-owner, or any other person acting in his behalf, accompanied by a constable or other officer of the peace, and they are hereby respectively empowered, to enter on the premises of the adjoining owner, so far as may be necessary for executing such work; And that if the outer-door of such building be shut, and being thereunto required, the person therein refuse to open the same, or if such building be empty and unoccupied, then it shall be lawful to break open such outer-door; and if any fixtures, goods, furniture or other thing obstruct the building of such intended party-wall or party-arch, or the pulling down any wall, partition or other thing necessary to be pulled down and removed in order to the building such intended party-wall or party-arch, then

Opening
doors and
removal of
goods, &c.

to remove such fixtures, goods, furniture and things to some other part of the same premises, or if there be no room on the premises sufficient for that purpose, to remove them to some other place of safe custody; And that from and after such entry, and at all usual times of working, it shall be lawful for the builder employed to erect such intended party-wall or party-arch, and for his servants and all others employed by him, to enter into and upon the premises, and abide therein the usual times of working, as well for the shoring up of the said building so broken into and entered upon, and for taking down and removing any party-wall, partition, wainscot or other thing necessary to be taken down and removed for the purpose aforesaid, as to build such intended party-wall or party-arch; and that if in any manner any such owner or other person hinder or obstruct any workman employed for any of the purposes aforesaid, or wilfully damage or injure the said works, then every such person so offending shall forfeit for every such offence a sum not exceeding ten pounds.

Party Walls.
Party Fences.
Intermixed Buildings.

—
Continuance of entry.

Penalty for hindrance.

XXXVII. And now, for the purpose of further protecting the interests of adjoining owners, be it enacted, with regard to external walls adjoining the ground or building of another owner, so far as relates to the making of openings therein, That if, without the consent in writing of the owner of such ground or building, any opening be made in any such wall, then it shall be lawful for such owner, and he is hereby entitled, to require the owner of the premises in which such opening shall be made to stop up the same with brick or stone-work, as the case may be, according to the form (No. 5.) in the schedule of notices, or to the like effect; And that if, within one month after such notice, such stoppage be not effected, then it shall be lawful for such owner, and he is hereby entitled, either

37.

Stopping of openings in external walls abutting on other premises.

By the 2 & 3 Will. IV. c. 71, s. 3, it is enacted, "That when the access and use of light to and for any dwelling-house, workshop, or other building shall have been actually enjoyed therewith, for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by

Stoppage thereof.

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

Costs of
stopping-up.

by himself or his workmen, with tools, implements and materials, to cause such openings so to be stopped, and he is also hereby entitled to be repaid the costs thereof; And with regard to such costs, so far as relates to the adjustment thereof, That if such owner refuse to make payment thereof, or if there be any dispute as to the amount thereof, then, on application for the purpose to the official referees, by either of the parties concerned, it shall be lawful for the person by whom they have been incurred, and he is hereby entitled, to refer the matter of such dispute to the official referees, and to have their determination thereon; And that it shall be the duty of such official referees to give to the applicant a certificate in relation thereto; And that if any party liable to pay any sum of money under such certificate fail to do so, then it shall be lawful for the party entitled to such costs to recover the same, in the manner hereinafter provided for the recovery of the costs, charges, and expenses of executing any works in pursuance of this Act.

Certificate of
official re-
ferees.

Recovery of
costs.

38.

Building of
party-walls
next vacant
ground.

XXXVIII. And be it enacted, with regard to walls, so far as relates to the building thereof on vacant ground at the line of junction of premises belonging to different owners, or in different occupations, That one month before the owner of any piece of vacant ground, or ground not hitherto built upon, shall build any building adjoining to another piece of

some consent or agreement expressly made or given for that purpose by deed or writing." By the next section this period of twenty years "shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been, or shall be submitted to, or acquiesced in, for one year after the party interrupted shall have had, or shall have notice thereof, and of the person making or authorizing the same to be made."

If two persons have a party-wall one half of the thickness of which stands on the land of each, they are not therefore tenants in common of the wall or of the land on which it stands, although the wall was erected at the joint expense of the two proprietors. The property in a wall erected

vacant ground, or ground not hitherto built upon, or build a fence-wall for such piece of ground, it shall be his duty, and he is hereby required to give to the owner or occupier of such adjoining vacant ground, a notice, which must be in writing, and must set forth his desire to build a party-wall or party-fence-wall, and describe the thicknesses and dimensions of such desired party-wall or party-fence-wall, according to the form (No. 16.) in the schedule of notices, or to the like effect; And that if, within such period of one month, such adjoining

owner shall signify his consent in writing, then the same must be built partly on the ground of one of the said owners or occupiers, and partly on the ground of the other owner, and such last-mentioned part is to be paid for as is hereinafter directed by such other owner or occupier; but if he do not signify such consent, then it shall be the duty of the building-owner to build an external wall for such building, and fence-wall for such ground, entirely upon his own ground, except as to the footings of any such wall.

These external walls cannot ever be made into party-walls without the consent of the first builder. Nor can the adjoining owner join on to, nor in any manner use these external walls without the consent of the first builder; and even tendering compensation to him for their use, according to the provisions of the late act, will not avail under this, as the first builder is not bound to accept of such compensation, but by this section can oblige the second builder to build his own external and independent wall wholly on his own ground.

at a joint expense follows the *Party Walls.* property of the land whereon it stands, and if one proprietor adds to the height of such a *Party Fences.* party-wall, and the other pulls down the addition, the first may *Intermixed Buildings.* maintain trespass for pulling down so much of it as stood on the half of the wall which was erected on the plaintiff's soil. (*Matts v. Hawkins*, 5 Taun. 20.) In declaring in such an action, it is desirable to remember that the one-half wall is the abuttal of the other half wall, because they are in law two walls; and if the half wall, in respect of which the plaintiff seeks to recover, is described by abutments which are appropriate only to the outer wall his action must fail.—*Murly v. M'Dermott*, 3 N. & P. 356; *S. C.* 8 A. & E. 138.

Consent of adjoining owner.

XXXIX. And be it enacted, with regard to any new 39.
Building of

*Party
Walls.
Party
Fences.
Intermixed
Buildings.*

chimney-
breasts, &c.,
in new party-
wall for ad-
joining
owner.

Instructions
by adjoining
owner.

Reimburse-
ment of ex-
penses.

*Ruinous
Buildings.*

40.

Repairing
and rebuild-
ing.

Application
to official re-
ferees.

party-wall, built on the line of junction of premises belonging to different owners, so far as relates to the providing of chimney-breasts and other accommodation for the adjoining owner, That when the owner of any piece of vacant ground shall have obtained the consent of the adjoining owner to build a party-wall on the line of junction of their respective premises, then, ten days at the least before beginning to build such party-wall, it shall be the duty of the building-owner to give the adjoining owner notice thereof, according to the form (No. 16.) in the schedule of notices, or to the like effect; And that if in due time the adjoining owner shall give instructions in writing, or by a plan and elevations or other sufficient drawings, then it shall be the duty of the building-owner to construct, if practicable, such and so many chimney-jambs, breasts and flues of chimneys, in all such parts of such party-wall as shall be by such instructions required, and to leave such recesses in every such wall as may be so required; but so that they be conformable with the directions of this Act concerning party-walls and chimneys; And that thereupon it shall be lawful for the building-owner to claim, and he is hereby entitled to recover from the adjoining owner all the expenses of constructing such chimney-jambs, breasts and flues of chimneys and recesses, as provided by this Act in that behalf.

XL. And whereas buildings within the limits of this Act are often, either from litigated titles thereto, or from the obstinacy, neglect or poverty of the owners thereof, or of the parties interested therein, or from other causes, in so ruinous a condition that passengers are endangered thereby; Now for the purpose of making provision in that behalf; Be it enacted, with regard to ruinous buildings, or parts of buildings, so far as relates to repairing or pulling down the same, that, upon receiving information of any building being in a ruinous and dangerous condition, it shall be the duty of the surveyor, and of the overseers for the time being of the parish or place in which the same shall be, and they are hereby respectively required, to apply forthwith to the official referees to authorize a survey to be made

thereof; And that, thereupon, it shall be lawful for the official referees to direct the surveyor to make such survey; And that, thereupon, it shall be the duty of such surveyor to act in all respects as in the case of a survey of party-walls; And that, upon the receipt of the certificate of the surveyor, it shall be lawful for the official referees, and they are hereby required to cause a copy thereof to be transmitted, if the premises be within the city of London, then to the court of lord mayor and aldermen, and if they be elsewhere, then to the overseers of the poor of the parish or place in which such premises shall be; And that, thereupon, it shall be the duty of such mayor and court of aldermen and overseers to cause, with all convenient speed, any such ruinous building to be securely shored, or a proper and sufficient hoard to be put up for the safety of all passengers; and to cause notice in writing to be given to the owner of such building to repair or pull down the same or any part thereof as the case may require, within fourteen days then next ensuing; And that if within the said fourteen days the repair or demolition thereof be not begun and be not completed as soon as the nature of the case will admit, then on a declaration being made before the said lord mayor or a justice of the peace, of such notice having been so given, (which declaration the said lord mayor and justice are hereby respectively empowered and required to receive,) it shall be lawful for the said lord mayor and court of aldermen, and they are hereby authorized and required, out of the cash in the chamber of London, and also for every such overseer of the poor by and out of the money in his hands, and they are hereby severally authorized and required, with all convenient speed, to order and cause such building or such part thereof so certified to be in a ruinous and dangerous condition, as shall be necessary for the safety of the passengers, to be repaired or pulled down, or secured in such manner as shall from time to time be requisite: Provided always, that if such lord mayor and aldermen, or such overseers, appeal against such certificate, it shall be the duty of the official referees to proceed to survey, to

*Ruinous
Buildings.*
Survey.

Notice to
lord mayor,
&c., and to
overseers.

Shoring and
erection of
boards, and
notice to
parties.

Repairs.

Appeal
against
survey.

*Ruinous
Buildings.**Demolition.*

certify and to award in all respects as in the case of an appeal from the certificate of the surveyor with reference to party-walls or intermixed buildings; And that if such official referees certify that the said premises are ruinous and dangerous, it shall be the duty of the said lord mayor or the said overseers to repair or pull down such building as aforesaid.

41.

*Disposal of
materials to
pay costs.*

XLI. And be it enacted, with regard to any such ruinous buildings so pulled down, so far as relates to the disposal of the materials thereof and to the application of the proceeds, That it shall be lawful for the said lord mayor and court of aldermen, or the said overseers, to sell and dispose of such of the materials as they shall judge necessary, and out of the moneys arising from the sale thereof to reimburse to themselves, the surveyors and official referees, and every person by them respectively employed for the purposes aforesaid, all the charges of the survey and appeal, and of putting up every such hoard, and of repairing, pulling down and securing such premises, and of making good the pavement, and of selling the said materials as aforesaid, or so much thereof as the moneys arising by such sale will extend to; And that if there be any surplus after payment of all expenses, then, upon demand thereof made by such owner, it shall be the duty of the said lord mayor, or of the said overseers, to account for and pay such surplus of the moneys arising by such sale to the owner of such building; or if there be any question as to the person entitled to such surplus, or as to the priority of title to such sum of such persons so entitled, or as to the proportions to which such persons are so entitled, then it shall be lawful either for the lord mayor or the overseers, or for any person claiming to be so entitled, to refer the matter to the determination of the official referees, and their decision shall be final; And that if no such demand be made, then such surplus shall, as regards places within the city of London, and the liberties thereof, be paid to the chamberlain of the city; and as regards all other places, such surplus shall be paid to the overseers and added to the moneys raised as rates for the relief of the poor

*Payment of
surplus on
demand.**If no de-
mand.*

of the parish or place, and accounted for accordingly: *Ruinous Buildings.*
 Provided nevertheless, that, at any time within six *City of London or overseers to re-fund within six years.*
 years from the deposit of such surplus, it shall be lawful for any such owner, his executors or administrators, to claim, and he and they are hereby entitled to recover such surplus; and the said lord mayor and aldermen of the city of London, as regards the said city and liberties thereof, are hereby required to pay such surplus out of the cash in the chamber of London; and every overseer, as regards places not within the said city or the liberties thereof, is hereby required to pay such surplus out of any moneys raised or to be raised by any rate for the relief of the poor.

XLII. And be it enacted, with regard to such *42.*
 ruinous buildings, so far as relates to the expenses of *If a deficiency, to be paid by the owner;*
 any such survey and appeal, putting up such board, repairing, pulling down, and securing such buildings, and selling the materials beyond the amount thereof, which shall have been satisfied by the application thereto of the proceeds of the materials, That if the moneys arising from such sale be insufficient to repay all such expenses, then, from time to time, such deficiency shall be paid by the owner of every such building, being the person entitled to the immediate possession thereof, if known; And that if, on demand thereof, such owner fail to pay such deficiency, then it shall be lawful for the lord mayor for the time being, if such ruinous building in question be within the city of London or the liberties thereof, or if elsewhere, for two or more justices of the peace, to levy the amount thereof by warrant under their hands and seals, by distress and sale of the goods and chattels of such owner, if any such can be found; And that if no such owner can be met with, or being met with, shall not, on demand, pay the said deficiency, and no sufficient distress of the goods and chattels of such owner can be found, then it shall be lawful for the person who shall at any time thereafter occupy any such building, or the ground where the same stood, and he is hereby authorized and required to pay and deduct the same out of the rent thereof; And that if he neglect or *Or levied by warrant of distress.*
Or occupier to pay and deduct from rent;
Or by dis-

Ruinous Buildings. refuse to pay such deficiency, then it shall be lawful for the said lord mayor, or two or more such justices of the peace, and they are hereby empowered and required to cause the same to be levied by distress and sale of the goods and chattels of any occupier of the premises, together with the costs of every such distress and sale; And that if the premises be situate within the city of London and its liberties, it shall be the duty of the person by whom the same shall be received, and he is hereby required to pay the amount to the chamberlain, to be by him from time to time placed to the credit of the cash of the said city of London; and if the premises, in respect of which such money shall be received or recovered, be not situate within the said city of London and the liberties thereof, then to pay the amount received to the overseers of the poor for the time being of the parish or place where the premises shall be situate, to be by them placed to the account of the said parish, in aid of the poor rate of the parish or place.

43. XLIII. And be it enacted, with regard to ruinous chimneys, roofs, and projections, so far as relates to the repairing thereof, That if a chimney-shaft, chimney-pot or other thing thereon, or the eaves, or parapet, or coping, or slates, or tiles on the roof, or any projection from the front walls of any building, be in danger of falling; then it shall be the duty of such surveyor and he is hereby required to require the occupier of such building, or if there be no occupier, then the owner thereof, to take down or secure the same within thirty-six hours after notice thereof shall have been given; and that if, within the time specified, such occupier, or some other person interested in such building, do not begin to take down or secure the same, and, as soon as the nature of the case will admit, complete such taking down or securing of the same, then it shall be the duty of such surveyor to give information thereof to a justice of the peace; and, thereupon, it shall be the duty of such justice of the peace to proceed to cause such chimney-shaft, chimney-pot or other thing thereon, or the eaves, or parapet, or coping, or slates,

distress on occupier.

Payment of money to chamberlain or to the overseers.

43. Repair of ruinous chimneys, &c.

Notice.

Repairs.

or tiles on the roof or projection from the front or side wall of such building as shall be considered by such surveyor in danger of falling, to be forthwith taken down or secured; And that if there be no occupier or known owner, then it shall be lawful for such justice to direct that the reasonable expenses, to be certified by the official referees, be paid by the overseers of the parish or place in which such building shall be situated; And if thereafter the owner of such building become known, or if the building become occupied, then it shall be lawful for the overseers of the poor, and they are hereby entitled to recover the amount of such expenses from such owner or from such occupier, as in the case of ruinous buildings hereinbefore provided for; And that if within the time limited the occupier or some other person interested in such building do not take down or secure the same, then for every day during which the same shall so remain unrepaired or not sufficiently secured, such occupier or the owner, if there be no occupier, shall forfeit and pay a sum not exceeding five pounds; And that such occupier or owner shall also pay the surveyor's fees and all other costs, charges, and expenses attendant upon any such taking down or securing the building; and all such surveyor's fees, and other costs, charges, and expenses may be recovered and levied in the same manner as such penalty: Provided always, that if the occupier of such building be not bound by virtue of any lease or other instrument to repair, reinstate or secure the premises, then such occupier is hereby entitled to retain out of the rent payable in respect of such premises, all such penalties, costs, charges, and expenses attendant upon or arising out of the taking down or securing, or the repairing or rebuilding the same, as in the case of any other works, the costs of which he is hereby required to pay in the first instance.

Ruinous Buildings.

Certification of expenses.

Recovery from owner or occupier.

Penalty.

Fees and expenses.

Reimbursement of occupier.

XLIV. And be it enacted, with regard to adjoining buildings, so far as relates to the making good any damage arising from the falling down of parts thereof, (except any such part of a party-wall as shall belong to and be used conjointly by the owners or occupiers

41.

Injury by the fall of chimneys, &c.

Ruinous Buildings. of the buildings parted thereby,) That if at any time any injury or damage be caused to any part of an adjoining building, or to the internal decorations and furniture, goods, wares, and merchandize in such building, by the falling down from any other building of any chimney-shaft, chimney-pot, parapet, coping or other thing, then it shall be the duty of the owner of the building from which such part shall fall, and he is hereby bound and required to reimburse the expense to which the owner or occupier may be put in making good such injury or damage, in like manner as herein directed concerning the reimbursement of the expenses of ruinous party-walls; and such costs shall be recoverable in the manner hereinafter directed for the recovery of the costs and expenses of executing works in pursuance of this Act.

Compensation.

45.
Court of
mayor and
aldermen.

XLV. And be it enacted, That all the powers and authorities by this Act vested in the mayor and aldermen of the city of London, may be lawfully exercised by the court of mayor and aldermen of the said city, to be holden in the outer chamber of the guildhall of the said city, according to the custom of the said city.

Expenses of Works.

46.
Repayment
of expenses
of works in
certain
cases.

XLVI. And, for the purpose of reimbursing any building-owner for the expense of works incurred in respect of any party structure; Be it enacted, with regard to the following works, so far as relates to the reimbursement, by the adjoining owner, of expenses incurred by the building-owner, in respect of any party structure, built to part the buildings or premises belonging to other owners from the buildings or premises belonging to himself; that is to say,—

First, With regard to any party-wall hereafter built on the line of junction of any two buildings; and,

Second, With regard to any party-wall hereafter built on the line of junction of any building and any vacant ground, or of vacant premises, belonging to different owners or occupiers; and,

Third, With regard to a ruinous and defective party-wall pulled down and rebuilt, either with

the consent of the adjoining owner, or in pursuance of the condemnation thereof, according to this Act, except a party-wall condemned on account of the injury done thereto by any building-owner, and the expenses of which and of other incidental works the official referees shall have awarded to be paid by such building-owner, by virtue of the provision in that behalf; and,

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of Works.*
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Fourth, with regard to one or more timber partitions between any two or more buildings pulled down, and a party-wall built in lieu thereof; and,

Fifth, with regard to a new party-wall or party-arch built in lieu of any party-wall or party-arch between intermixed properties pulled down, either with the consent of the adjoining owner, or in pursuance of the condemnation of such party-wall or party-arch; and,

Sixth, with regard to any party-wall built on the site of a party-fence or party-fence-wall, and used otherwise than as a party-fence-wall by the person who shall not have built the same; and,

Seventh, with regard to every other case of reimbursement, in respect of any party structure;

That if the party structure, be built in the manner, and of the materials, and of the thicknesses of such structure as required by this Act in reference thereto, then it shall be lawful for the building-owner at whose expense such work shall have been executed, to claim and he is hereby entitled to be paid and to recover from the person who is entitled to the immediate possession of the adjoining building or ground, or who is in the immediate occupation thereof, the following compensations; that is to say,—

Recovery of
expense from
adjoining
owners.

If a new party-wall or party-arch built on the line of junction by one owner, be made use of, either wholly or partially, by the adjoining owner, then the sum of money pro-

In reference to this section it must be remembered, that the first builder would be entitled to remuneration for the whole of a

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of Works.*
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portionate to the value of so much of such party structure so made use of; and party or fence-wall, used not only for building purposes, but also for purposes of distinguishing and defining the boundaries of property; thus where *A.* uses *B.*'s wall of three hundred feet in length for building purposes for fifty feet only, and the residue of the wall divides the two properties, *A.* must pay half the expense of building the whole length of such wall.

If chimney-jambs, chimney-breasts and flues have been set up in any party-wall in pursuance of the instructions of the owner of any vacant ground adjoining to the same, then a sum equal to the value thereof; and

If an unsound party-wall or other party structure be pulled down and rebuilt,

But its unsoundness must be certified by the district surveyor, or official referees.

then a sum of money equal to a proper proportion of the value of the new party structure, deduction being made for a due proportion of the old materials, and also a proportionate part of all expenses which shall be necessary for pulling down the old party structure, in lieu of which such new party structure shall be built; and

If a party-wall be built in lieu of a timber partition or other party structure, and be made use of by the adjoining owner, then a sum of money proportionate to the value of so much of such new party-wall as shall be so made use of; and also a proportionate part of all expenses which shall be necessary for pulling down the old timber partition or other party structure; and

If a party-wall or party-arch already built, or hereafter rebuilt, be used by any adjoining owner, then a sum of money proportionate to the value of so much of such party structure, as the adjoining owner shall use, deduction being made, where proper, for the value of old materials;

And, in every case, the whole of the reasonable expenses of the shoring up the adjoining building, and of removing any goods, furniture, or

other things therein, and of pulling down any wainscot or partition thereof; *Expenses of Works.*

And also, such surveyors' fees and any other fees payable in respect of any acts performed by the official referees; and also, such other costs (if any) as may have been awarded by the official referees as aforesaid in any of the cases hereby provided for;

And until such expenses shall be so paid, every person at whose expense such party structure shall have been built is hereby entitled to and shall be possessed of the sole property thereof, and of the ground whereon it stands, and the same shall be vested entirely in the person at whose expense such party structure shall have been built. *Delay of payment.*

XLVII. And be it enacted, with regard to the costs of all the works which shall be executed under this Act, incurred either by an owner or by an occupier, either on behalf of the owners of the same premises, or on behalf of the owner of the adjoining premises, so far as relates to the recovery thereof, That, within *47. Recovery of costs of building.*

twenty-one days after the completion of the work, it shall be the duty of the person by whom such expense shall have been incurred, to deliver to the adjoining owner of the building or premises in respect of which such expense shall have been incurred, an account in writing of the expenses of the work, including all preliminary and incidental operations; and also if the work shall have

Under similar provisions contained in the former act (s. 41), it was decided that the notice therein required did not apply to the erection of a new building, but only to the renewal of an old party-wall; and also that the first builder of a party-wall adjoining to vacant ground was not restricted to the actual enacted term of notice, but that he might give his notice within reasonable time after the adjoining house was attached to his wall.—*Collins v. Wilson*, 4 Bing. 551; *S. C.* 1 M. & P. 454.

have been executed by the authority of the official referees, by virtue of the power hereby provided for supplying the want of consent of owners, then a copy

There was a similar provision in the former act (s. 41), and it has led to certain judicial decisions which will furnish pre-

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of Works.*
—
Account.

of such account shall also be delivered to the official referees at their office; And that every such account must contain a true account,—

cedents for future guidance. In conformity with one of these cases, as to the recovery of a proportion of the expenses from the adjoining owner for anything done under the Act, we may conclude that before an action can be brought to recover a proportion of the expenses of building a party-wall, the accounts prescribed by this section must be delivered, whether the house be occupied by the owner or by a tenant; and a formal demand of the money must be made by the claimant ten days before action brought, or the summary remedy provided by the Act can be taken advantage of (*q*). Where the account delivered contained a correct statement of the quantity of work done, and the materials allowed for it, it was held a sufficient account, though it also contained a statement of the prices paid for the brick work, which exceeded the prices fixed by the statute (*r*).

And the demand for payment referring to that account, and consequently of a greater sum than was recoverable, is a good demand; and where the party-wall was built more on the defendant's ground than on plaintiff's; held, that the plaintiff might recover the expenses of building, the jury finding that there was no intention of encroaching, and the defendant having made no objection while the work was in progress (*s*).

First, of the number of rods and parts of rods of brick-work, and of all digging, and of concrete, stone-work, and other requisite materials, and of the labour required in executing so much of the work as the owner of the adjoining building shall be liable to pay, and of the respective prices thereof; and,

Secondly, of any deduction which such adjoining owner shall be entitled to make therefrom on account of the old materials of so much of the wall or other structure pulled down, which shall have belonged to him;

Data of
Account.

And also a true account of the expenses of all other preliminary and incidental operations; And that all such works must be estimated and valued in every such account at such rates and prices as shall from

(*q*) *Philp v. Donati*, 2 Tann. 62.

(*r*) *Reading v. Barnard*, M. & M. 71.

(*s*) *Ibid.*

time to time be fixed by the official referees; And that if within ten days from the delivery of such account, any party dissatisfied with the proportion of the amount thereof charged to him, appeal to the official referees, then upon the receipt thereof, or if, in cases of want of due consent as aforesaid, such account be delivered to the official referees as aforesaid, it shall be the duty of the official referees to examine such account, and to certify whether they approve or disapprove of the items thereof, and whether the rates and prices are duly charged, and whether the proportion of the account charged to the party appealing be duly charged, and also to appoint how and by whom the expenses of such examination are to be borne, and also to appoint the time or times at which the amount of such account, and of such expenses payable by any party, are to be paid; And that if they certify their disapproval, or that the charges are not duly made, or the amount fairly apportioned with regard to the party appealing, then before any demand be made or any proceedings be taken thereon, the account must be amended, and again examined by the official referees, and certified as aforesaid; And that if the official referees certify their approval, then at the time or times appointed by the said official referees, it shall be lawful for the person entitled to such costs and expenses to demand the amount thereof; And that if, within ten days after the delivering of such account to the party liable to pay the same, such party do not either appeal against such account or pay the same; or if, within ten days after the demand thereof, in conformity with the certificate of the official referees, the amount thereof, together with the costs of the examination of the account as the official referees shall certify, be not paid; then it shall be lawful for the person entitled thereto to recover the same, or so much thereof as shall be then due, by the summary proceeding hereby provided.

*Expenses
of Works.*

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Examination
of accounts
by official re-
ferees.

Disapproval.

Approval
and demand
of payment.

Recovery of
amount.

48.

Reimburse-
ments of
costs of
works to
occupiers.

XLVIII. Provided always, and be it enacted, with regard to works executed under this Act, so far as relates to the reimbursement to the occupier of any costs by him paid in respect thereof, That, unless there be some

Expenses
of Works.

covenant or agreement to the contrary between the parties, it shall be lawful for such occupier and he is hereby entitled to deduct from the rents due or becoming due from him to his lessor or landlord, the amount of any such costs, charges, and expenses payable by his lessor or landlord, and the costs, charges and expenses of any distress and sale made on him through the default of his lessor or landlord; And that the receipt for such payment shall be a sufficient discharge to any occupier for so much money as he shall have so paid, or which shall have been so levied on his goods and chattels in pursuance of this Act, and shall be allowed by such lessor or landlord in part or full payment (as the case may be) of the rent due to him by such occupier.

Discharge
and repay-
ment.

The occupier, however, must be careful lest he lose his remedy against the landlord by any active interference in ordering and superintending the works, the expenses of which he claims to be reimbursed.

Where notice of pulling down and rebuilding a party-wall was given under the former act, and the tenant of the adjoining house, who was under covenant to repair, finding it necessary, in consequence, to shore up his house, and to pull down and replace the wainscot and partitions of it, instead of leaving such expenses to be incurred and paid by the owner of the house, giving notice in the manner prescribed by the Act, and afterwards paying the same to him upon demand, employed workmen of his own to do these necessary works, and paid them for the same:—Held, that he could not recover over against his landlord, such expenses incurred by his own orders, and paid for by him in the first instance; all the powers and authorities given by the Act in respect to any works to be done, being given to the owner of the house intended to be pulled down and rebuilt, and the landlord of the adjoining house being only liable by the Act to reimburse his tenant money paid by him to the other owner, for such works as are authorized to be done by such other owner, in respect of such adjoining house.—*Robinson v. Lewis*, 10 East, 227.

A tenant under covenant to repair, cannot maintain an action against his landlord for a moiety of the expense of rebuilding a party-wall, which, being out of repair, the tenant pulled down and rebuilt at the joint expense of himself and the occupier of the adjoining house, to whom he had given the notice required by the statute in his landlord's name, but without his authority.—*Pizy v. Rogers*, 1 Ry. & M. 357.

49.

Recovery of

XLIX. And be it enacted, with regard to the costs

and all other expenses of pulling down, securing, repairing and rebuilding party structures, or other parts of buildings, according to the provisions of this Act, so far as relates to the recovery thereof, amongst the several owners of the premises, That when such costs and expenses shall have been ascertained and paid by the owner, upon whom the payment thereof shall have first fallen, then, as to any building or tenement held under any lease or agreement for a lease, or other agreement for the occupation thereof, made before the coming into operation

*Expenses
of Works.*
—
expenses of
buildings.

of this Act, it shall be lawful for such owner, and he is hereby entitled to recover the same from the persons now bound or liable by law, or by any existing contract, to maintain and repair such buildings, in respect of which such costs and expenses shall have

This section, referring to the remedies under the former act upon leases, agreements, &c., existing at the time of passing of this Act, leaves the parties to such leases, &c., to decide their several responsibilities, as if the former act still existed; therefore, the cases already given (*ante*, s. 33) will apply directly to this section.

been incurred; but if any dispute or difference arise as to the persons so bound or liable, then every such

Differences.

dispute or difference shall be referred to the official referees; And that thereupon such official referees shall ascertain and determine the persons bound or liable to pay such costs and expenses, and also in what proportions such costs and expenses are to be paid by the parties liable to pay the same, and their decision shall be final; And that as to any building or tenement to be held under any lease or agreement for a lease, or other agreement for the occupation thereof, made after the coming into operation of this Act, except a lease renewable for ever on a fixed fine or other customary payment, all such costs and expenses shall be charged upon the lessor granting such lease or making such agreement, and not upon any lessee or sub-lessee holding under any such lease or agreement, subject, nevertheless, to any express covenant or agreement made between any such lessor and lessee in that behalf; and in case of such excepted lease, such costs and expenses shall be charged upon the lessee instead of the lessor,

*Determina-
tion by offi-
cial referees*

Charges.

*Expenses
of Works.*Receipt of
rents.Recovery of
rents.Priority of
right.Limitation
of distress.Continuance
of distress
until pay-
ment made.

subject as aforesaid to any express covenant or agreement in that behalf between any such lessee and his sub-lessee holding under such lessee upon other than a fixed fine or customary payment as aforesaid; And that in default of such costs and expenses being duly paid, it shall be lawful for the party to whom the same shall be payable, and he is hereby entitled to receive from the occupier thereof the rents and profits of such building or tenement; and for that purpose to give notice to such occupier to pay over to him such rents and profits; And that thereupon, if such occupier fail to pay such rent and profits accordingly, then it shall be lawful for the person to whom such costs and expenses shall be payable to recover the same from such occupier by the summary proceeding hereby provided, in such proportions and at such times as shall be appointed by the award of the said official referees in that behalf; And that after such notice shall be given, and before such costs and expenses shall be paid, it shall not be lawful for any person otherwise entitled to receive such rents and profits, and he is hereby disabled from bringing any action and from taking any proceeding at law or in equity to recover such rents and profits: Provided always, That if on the hearing of the application for the warrant to levy such costs and expenses by distress according to the provision of this Act in that behalf, the occupier, not being an owner, show that he is not bound to pay, in respect of such building or tenement, any rent or profit, or that the amount of the rent or profit payable by him is not sufficient, then it shall not be lawful to issue such warrant, if there be no rent due or accruing; or if there be rent due or accruing, then to the extent only of the amount of such rent; And that if such costs and expenses or any part thereof remain unpaid, and if the same or any future occupier be or become liable to pay rent in respect of such building or tenement, then from time to time, until the same be paid, it shall be lawful to levy the same by distress, according to the provisions of this Act in that behalf, upon the same or any such future occupier.

50.

Official re-

L. And be it enacted, with regard to such costs and

expenses of works executed under this Act, so far as relates to contribution thereto by persons bound or liable to make contribution, That for the purpose of enabling the party upon whom the payment of such costs and expenses shall fall, either in the first instance or subsequently, to obtain contribution from other persons, being owners, according to the meaning of this act, in like degree, and so bound or liable to make contribution, it shall be lawful for every such first-mentioned person, whether he be freeholder, copyholder, leaseholder, mortgagee in possession, and whatever may be his interest or the nature and extent of such his interest, and whether he hold in his own right, or in right of others, and whatever may be the kinds and degrees of their respective interests, and he is hereby entitled to a contribution from every other person having as owner an interest in the premises of whatever kind or degree; which contribution is to be computed, according to the amount of his interest, in proportion to that of other persons interested, so far as such persons may be known, or can be reached by process of any court of law or equity; And that it shall be lawful for any party so interested, and he is hereby entitled, to require the official referees to settle and determine the same by their award, and their decision shall be final; And that if the person upon whom the payment of such costs and expenses shall have fallen have paid in respect of the interest of another or others, either unknown or who could not be reached by process of any court of law or equity, more than his own just proportion, then, on the production of such award, duly made, signed, and sealed, it shall be lawful for such person to have and exercise against other parties against whom such award shall be made, and he is hereby entitled to the like remedies to compel payment of money as are hereby given for compelling the first payment of such costs and charges of such expenses.

Expenses of Works.

referees to determine contributions.

Proportional contributions.

Decision of official referees.

Recovery of excess paid by any contributor.

LI. And now, for the purpose of facilitating the improvement of the drainage of houses, Be it enacted, with regard to the drains, cesspools, and privies to buildings hereafter built, so far as relates to the making

Drainage of Houses.

51.

Making of

*Drainage
of Houses.*

drains ac-
cording to
Schedule
(H.)

Penalties.

Communica-
tions with
sewers.

Saving pow-
ers, &c. of
commission-
ers of sewers.

*Streets
and
Alleys.*

52.

Width
thereof.

Penalties.

*Buildings,
Use there-
of.*

53.

Occupation
of cellars or
rooms unfit

thereof, That from the passing of this Act all the conditions, regulations, and directions contained in the Schedule (H.) to this Act annexed shall be duly observed and performed; And that if any person offend in respect thereof he shall be liable to all the penalties and forfeitures by this Act imposed, in respect of any buildings either built contrary thereto or without due notice to the surveyor appointed, in pursuance of this Act, to inspect such buildings: Provided always, with regard to such drains, so far as relates to the communication thereof with the sewers under the jurisdiction of the commissioners of sewers, That unless the regulations of such commissioners now or hereafter in force be repugnant to the directions contained in such schedule, and to the extent to which such regulations are not so repugnant, it shall be the duty of every person, and he is hereby required to make such drains to conform to such regulations: And that with regard to such drains, except so far as is hereby otherwise provided, all the rights, powers, jurisdiction and authority vested in any such commissioners shall be as valid and effectual as if this Act had not been passed.

LII. And now, for the purpose of making provision concerning streets and other ways of the metropolis; Be it enacted, with regard to such streets and other ways hereafter formed, so far as relates to securing a sufficient width thereof, That, from the passing of this Act, all the conditions, regulations, and directions contained in the Schedule (I.) to this Act annexed, shall be duly observed and performed; And that if any person offend in respect thereof, he shall be liable to all the penalties and forfeitures by this Act imposed in respect of any buildings either built contrary thereto, or without due notice to the surveyor appointed in pursuance of this Act to inspect such buildings.

LIII. And now, for the purpose of discouraging and prohibiting the use of buildings unfit for dwellings; Be it enacted, with regard to every building of the first or dwelling-house class, whether already or hereafter built, so far as relates to the occupation thereof, or to the occupation of any underground room or cellar thereof,

That from and after the first day of July one thousand eight hundred and forty-six it shall not be lawful to let separately to hire as a dwelling any such room or cellar not constructed according to the rules specified in the Schedule (K.) to this Act annexed, nor to occupy or suffer it to be occupied as such, nor to let, hire, occupy, or suffer to be occupied, any such room or cellar built underground, for any purpose (except for a ware-room or store-room); And that if any person wilfully let, or suffer to be occupied in manner aforesaid, any underground cellar or room, contrary to the provisions of this Act, then on conviction thereof, before two justices of the peace, such person shall be liable to forfeit, for every day during which such cellar or room shall be so occupied, a sum not exceeding twenty shillings; and one-half of such penalty shall go to the person who shall sue for the same, and the other half to the poor of the parish in which such unlawfully occupied cellar or room shall be situate; And that on or before the first day of January one thousand eight hundred and forty-five, it shall be the duty of the overseers of the poor, and they are hereby required to report to the official referees the number and situation of the dwellings within their respective parishes, of which any underground room or cellar shall be so occupied; And that thereupon it shall be the duty of the official referees, and they are hereby empowered to direct such notice to be given to the owners and occupiers of such dwellings, as shall appear to such official referees to be best calculated to give to such owners or occupiers full knowledge of the existence, nature, and consequences of this enactment: And that it shall be the duty of the district surveyors, and they are hereby required to give full effect to the directions of such official referees in this behalf.

Buildings, Use thereof.

—
for dwellings.

Penalty.

Report by overseers of poor as to number and situation of dwellings.

Notice thereon by official referees to owners and occupiers.

District surveyors to observe directions of official referees.

LIV. And now, for the purpose of making provision, concerning businesses dangerous in respect of fire or explosion; Be it enacted, with regard to the following businesses; (that is to say), the manufacture of gunpowder or of detonating powder, or of matches ignitable by friction or otherwise, or other substances liable to sudden explosion, inflammation, or ignition, or of vitriol,

54.

Buildings near dangerous businesses as to fire.

Buildings, or of turpentine, or of naphtha, or of varnish, or of Use there- fireworks, or painted table-covers, and any other ma- of. — manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion, so far as relates to the erection of buildings in the neighbourhood of the place where any such business is carried on, and so far as relates to the carrying on of any such business in the neighbourhood of public ways or buildings, That it shall not be lawful hereafter to erect any building of any class nearer than fifty feet from any building which shall be in use for any such dangerous business; but if a building already existing within fifty feet from any such building be hereafter pulled down, burnt, or destroyed by tempest, such building may be rebuilt; And that it shall not be lawful for any person to establish or newly carry on any such business, either in any building or vault or in the open air, at a less distance than forty feet from any public way, or than fifty feet from any other building, or any vacant ground belonging to any other person than his landlord; And that if any such business be now carried on in any situation within such distances, then, from the expiration of the period of twenty years next after the passing of this Act, it shall not be lawful to continue to carry on such business in such situations; And that if any person erect any building in the neighbourhood of any such business contrary to this Act, then, on conviction thereof before two justices, he shall forfeit a sum not exceeding fifty pounds, for every day during which such building shall so remain near to such dangerous business; or if any person establish anew any such business, or carry on any such business contrary to this Act, then on conviction thereof before two justices, such person shall be liable to forfeit for every day during which such business shall be so carried on, a sum, not exceeding fifty pounds, as the said justices shall determine; And that it shall be lawful for the justices also to award to the prosecutor such costs as shall be deemed reasonable; And that if the offender either fail or refuse to pay such penalty and costs immediately

Distance from build- ings.

New busi- nesses.

Prohibition after twenty years.

Fifty pounds penalty and costs.

Costs.

Distress;

after such conviction, then they may be levied by distress of the goods and chattels of the person convicted; or if there be no such distress, then such person shall be committed to the common gaol or house of correction for any time not exceeding six months, at the discretion of such justices; and that by warrant under the hands and seals of two or more justices of the peace.

LV. And now, for the purpose of making provision concerning businesses offensive or noxious, Be it enacted, with regard to the following businesses; that is to say,—

Blood-boiler,	Soap-boiler,
Bone-boiler,	Tallow-melter,
Fellmonger,	Tripe-boiler,
Slaughterer of cattle, sheep, or horses,	

and any other like business offensive or noxious, so far as relates to the erection of buildings in the neighbourhood of any such business, and so far as relates to the carrying on of any such business in the neighbourhood of any public way, or of other buildings of the first or dwelling-house class, That it shall not be lawful hereafter to erect any buildings of the first or dwelling-house class nearer to, than fifty feet from, any building which shall be in use for any such offensive or noxious business; but if a building already existing within fifty feet be hereafter burnt, pulled down, or destroyed by tempest, such building may be rebuilt; And that it shall not be lawful for any person to establish or newly carry on any such business, either in any building or vault or in the open air, at a less distance than forty feet from any public way, or than fifty feet from any other such buildings of the first or dwelling-house class; And that if any such business be now carried on in any situation within such distances, then, from the expiration of the period of thirty years next after the passing of this Act, it shall cease to be lawful to continue to carry on such business in such situation, save as is hereinafter provided; And that if any person erect any building in the neighbourhood of any such business, contrary to this Act, then, on conviction thereof before two justices, he shall forfeit a sum not

*Buildings,
Use there-
of.* —

Or imprison-
ment.

55.

*Buildings
near noxious
businesses
as regards
health.*

*Distance
from build-
ings.*

*New busi-
nesses.*

*Prohibition
after thirty
years.*

*Fifty pounds
penalty and
costs.*

*Buildings,
Use there-
of.* —

exceeding fifty pounds for every day during which such building shall remain near to such offensive or noxious business; or if any person establish anew any such business, or carry on any such business contrary to this Act, then, on conviction thereof before two justices, such person is hereby made liable to forfeit for every day during which such business shall be carried on, a sum not exceeding fifty pounds, as the said justices shall determine; And that it shall be lawful for the justices also to award to the prosecutor such costs as shall be deemed reasonable; And that if the offender either fail or refuse to pay such penalty and costs immediately after such conviction, then they may be levied by distress of the goods and chattels of the person convicted; or, if there be no such distress, then such person shall be committed to the common gaol or house of correction for any time not exceeding six months, at the discretion of such justices, and that by warrant under the hands and seals of two or more justices of the peace.

Distress.

Or imprison-
ment.

56.

The penalty
hereinbefore
imposed to
be enforce-
able only at
a special
sessions.

LVI. Provided always, and be it enacted, with regard to any such offensive or noxious business, whether such business be now carried on at a less distance than forty feet from any public way, or than fifty feet from any other building, or be hereafter carried on at a greater distance, yet so as to cause danger or annoyance, so far as relates to the mitigation of any penalty or punishment for unlawfully carrying on thereof, That every such penalty hereinbefore imposed shall be enforceable only at a special sessions of the peace summoned for that purpose, or on an appeal as hereinafter provided, or on a trial as hereinafter provided; and that, notwithstanding the said term of thirty years shall have expired, if any party charged with carrying on such business show that in carrying on such business all the means then known to be available for mitigating the effect of such business in any such respect have been adopted, then it shall be lawful for such justices to receive evidence thereof, and according to such evidence to mitigate the penalty as to them shall seem fit: Provided further, with regard to such offensive or noxious business, so far as relates to

Use of means
to mitigate
noxiousness
of businesses.

Adoption of
means to
mitigate

the adoption of means to mitigate the injurious effects thereof, That notwithstanding the said period of thirty years shall have expired, if it shall appear to the justices whether at petty sessions as aforesaid, or on appeal, or on trial by jury, as hereinafter provided, that the party carrying on any such business shall have made due endeavours to carry on the same with a view to mitigate so far as possible the effects of such business, then although he hath not adopted all or the best means available for the purpose, yet it shall be lawful for such justices assembled, and they are hereby empowered, to suspend the execution of their order or determination, upon condition that, within a reasonable time to be named, the party convicted do adopt such other or better means as to the said justices shall seem fit, or before passing final sentence and without consulting the prosecutor, to make such order touching the carrying on of such business as shall be by the said court thought expedient for preventing the nuisance in future: Provided always, that if the matter in respect of which such penalty shall be incurred come before any superior court, it shall be lawful for such court to exercise such power of mitigating such penalty, or of suspending the execution of any judgment, order or determination in the matter, or to make such order touching the carrying on of such business as to the court shall seem fit in the case.

*Buildings,
Use there-
of.* —
after con-
viction.

Mitigation
of penalty by
superior
courts.

LVII. And be it enacted, with regard to any business offensive, noxious, or dangerous, and with regard to any building erected or continued within any such distance as aforesaid from any such business dangerous, noxious, or offensive, so far as relates to a conviction in respect of any such business, and to an appeal from such conviction, That if any person be dissatisfied with the decision of such justices, and if, within four days after such decision, notice be given to the party appealed against, by or on behalf of such person,

57.
Conviction
and appeal
as to certain
trades not
specified.

Recogni-
zances.

These provisions are similar to those in the former act, giving a right of appeal to the quarter sessions, and making its decision binding and conclusive upon all parties. Four days are given, however, instead of two, wherein notice of appeal may be given. Under s. 96, of

*Buildings,
Use there-
of.* —

of his intention to appeal; and if he enter into a recognizance with two sufficient securities conditioned to try such appeal, and to abide the order of the court, and pay to the party appealed against, such costs (if any) as shall be awarded against him, then it shall be lawful for such party so dissatisfied to appeal against such conviction to the justices of the peace at their general quarter sessions of the peace, to be holden within four months after such conviction, for the place in which such premises shall be situate; And that if the premises be situate within the city of London, and liberties thereof, then the appeal must be to the quarter sessions thereof, or if the premises be situate in the counties of Middlesex, Kent, or Surrey, or in the city and liberties of Westminster, or

Sessions.

Proceedings.

in the liberties of her Majesty's Tower of London, then to the quarter sessions thereof respectively, as the case shall be; And that if, within the above-mentioned period, such appellant shall have entered into such recognizance as herein required, and if within one month thereafter he give notice of the grounds of such appeal, then it shall be lawful for such justices, and they are hereby empowered, to proceed to hear and examine on oath into the causes and matters of such appeal (which oath they are hereby empowered to administer), and to determine the same, and to award

the former act, where the right of appeal is given to any person who may think himself aggrieved by any conviction, commitment, distress, order or judgment of the justices, it was held, that a district surveyor who had lodged a complaint against a party for an alleged infringement of the act, which complaint had been dismissed by the justices, could not appeal against their decision to the quarter sessions, for the act gave that right only to the party aggrieved by any conviction, which must apply therefore to affirmative orders, under which something is to be done by which a party may be aggrieved. In the present section, the words are far more general; "if any person be dissatisfied," he may appeal. Perhaps, however, the reasons given in the former case, would apply to prevent a similar appeal under the present Act. The surveyor, as was then observed, "might apply to two other justices, who might entertain a different opinion." Certainly, this would be the cheapest and most expeditious course.—*Rex v. Middlesex (Justices)* 16 East, 310.

such costs to be paid by the said parties as they think proper; And the order, judgment and determination of the said justices in their respective sessions shall be binding and conclusive upon all parties. *Buildings, Use thereof.* —

LVIII. Provided always, and be it enacted, That if before conviction by two such justices, the party complained against desire to have the matter tried by a jury, and enter into a recognizance to try such matter without delay, and to pay all costs of trial if a verdict be found against him, then such matter may be tried at the next practicable court of quarter sessions, or whensoever the court shall appoint; And that thereupon, or on the application of such party, it shall be lawful for the said court of quarter sessions, and they are hereby authorized and required to issue their warrant or precept to the sheriff or other proper officer (as the case may be), requiring him to return a competent number of persons qualified to serve on juries, according to the provisions of an Act made in the sixth year of the reign of his late Majesty King George the Fourth, *58. Trial by jury at quarter sessions.* “for consolidating and amending the Laws relative to Jurors and Juries;” And that it shall be lawful for the said court of quarter sessions, and they are hereby authorized and empowered by precept, from time to time, as occasion may require, to call before them respectively every person who shall be thought proper or necessary to be examined as a witness before them on oath concerning the premises; And that if the said court think fit, it shall be lawful for them, and they are hereby empowered to authorize the said jury to view the place in question in such manner as they shall direct, and to command the attendance of such jury, and of all such witnesses and parties, as shall be necessary or proper, until such affairs for which they are summoned shall be concluded; And that the said jury shall inquire and try and determine by their verdict, *50. 6 Geo. IV. c. 50. Witnesses. View of the premises. Verdict of jury.*

*Buildings,
Use there-
of.* —

Judgment
according to
verdict.

And judg-
ment to be
binding.

59.

Appeals to
quarter ses-
sions for
Surrey and
Kent.

To sessions
at South-
wark.

To sessions
at Green-
wich.

Further
meetings.

Adjourn-
ments.

whether the business in question be offensive or noxious, and whether the party in question have done any act whereby the penalty hereby imposed in respect thereof has been incurred; And that, subject to the power hereinbefore conferred of mitigating such penalty or suspending their judgment, order, or determination thereon, or making such order touching the carrying on of the business aforesaid, the said court of quarter sessions shall give judgment according to such verdict, and shall award the penalty (if any) incurred by the defendant, and shall and may (if they see fit) award to either of the parties such costs as they may deem reasonable, which verdict, and the judgment, award, order, or determination thereupon shall be binding and conclusive.

LIX. And be it enacted, with regard to any appeal in respect of a conviction for carrying on any such dangerous, offensive or noxious business, so far as relates to the place where such appeal is to be heard, That if the appeal be to the general quarter sessions of the peace for the county of Surrey or the county of Kent, then the jury (if any) to be impannelled, in pursuance of this Act, and all parties required to attend the quarter sessions for the said counties pursuant to such application, shall be impannelled and required to attend at some general or special adjournment of the said quarter sessions to be held within six weeks next after the original sessions; And that if the matter relate to the county of Surrey, then such adjournment shall be to some convenient place in the borough of Southwark in the said county; And that if the matter relate to the county of Kent, then such adjournment shall be to some convenient place in the borough of Greenwich in the said county; and such times and places shall be appointed by the justices of the said counties respectively assembled at such original sessions; And that, from time to time, every further meeting of the said sessions, for any thing to be done upon such application, shall be appointed at or within the space of three weeks from the last meeting; And that, from time to time, it shall be lawful for the justices of the peace for the said counties of Surrey and Kent respectively, and

they respectively are hereby empowered and required to make such adjournment and hold such sessions as there shall be occasion. *Buildings, Use thereof.*

LX. Provided always, and be it declared, with regard to any business which is contrary to any existing act of parliament, or otherwise contrary to law, so far as relates to the operation of this Act in that behalf, That, notwithstanding any- 60.
Common law and statutory remedies not affected.

thing in this Act contained, this Act shall not be deemed to authorize any person to carry on any such business either within such limits or otherwise, or any business which it is unlawful to carry on, within any limits or in any manner contrary to any public, local, or private act of parliament, or otherwise contrary to law; nor

No business heretofore unlawful is legalized by this Act, though many may be prohibited which were formerly allowed. Nor does the Act interfere with any existing right to proceed in case of nuisance, either by action or indictment; but leaves all former remedies as they were. The remedies herein given, are therefore additional to any previously in existence, not in contravention of, or substitution for them.

to affect, abridge or restrain the right, the duty or the power of any person, whether private person or public officer, to prosecute, either civilly or criminally, any person who shall carry on, within the limits of this Act, any offensive, noxious, or dangerous business.

LXI. And further, for the regulation or removal of any offensive, noxious, or dangerous business now carried on; Be it enacted, with regard to any such business, so far as relates to the purchase thereof, or of the premises wherein it shall be carried on, that if two-thirds in number of the inhabitant householders of any parish in which such business shall be carried on, present a memorial to her Majesty in council, stating the existence of such offensive, noxious, or dangerous business in such parish or the neighbourhood thereof, and praying the removal of such business therefrom, and thereby engaging to provide compensation to the persons carrying on the same, either at the expense of the memorialists, or by means of a rate to be levied on the inhabitants of the said parish, or such part thereof as may be affected by such business, then it shall be 61.
Regulation or removal of trades deemed nuisances by purchase.
Memorial to Queen in council.

*Buildings,
Use there-
of.* —

Order for
removal.

Compensa-
tion.

4 & 5 Vict. c.
12.

Unlawful to
continue
such trades
after pur-
chase.

62.

Funds for
defraying
compensa-
tion.

lawful for her Majesty to refer the matter to the lords of the committee of privy council for trade, to consider the character of such business, whether it be offensive, noxious, or dangerous; And if it appear to be so, and that there are no means of rendering it otherwise by the adoption of methods available, without unreasonable sacrifice on the part of the person by whom it is carried on, then it shall be lawful for her Majesty, by order in council, to direct that the removal of such business may be purchased, either at the expense of the memorialists or by means of a rate, as aforesaid, as to her Majesty shall seem fit; and also to direct the sheriff of the county or other proper person in the parish or liberty in which such business is carried on, to summon a jury according to the provisions of an act made and passed in the fourth year of the reign of her present Majesty, intituled "An Act to enable Her Majesty's Commissioners of Woods to make a new Street from Coventry-street to Longacre, and for other Improvements in the Metropolis," to determine what compensation shall be paid to the party carrying on such business for the removal thereof, and to the owner and occupier of the premises for the restriction of the use of his buildings for such purpose; And that if, within three months after the verdict of such jury shall be given, and judgment thereon, the inhabitants of such parish or neighbourhood pay or tender such compensation, then, within three months from the payment or tender of such compensation, it shall cease to be lawful for the party carrying on such business to continue the same, and for any owner or occupier thereof either to carry on or to permit to be carried on such business in the same or any part of the same premises.

LXII. And be it enacted, with regard to the funds for defraying such compensation, so far as relates to the raising thereof, That if her Majesty shall by such order direct the compensation to be paid by means of a rate, then it shall be lawful for the overseers of the parish to raise such sum as shall be necessary, either as a separate rate in the nature of poor's rate, or as part of the poor's rate, on the inhabitants at large of such

parish; or if in pursuance of the memorial of the inhabitants of such part of the said parish as shall be affected by the said business, it be appointed by such order in council that such last-mentioned inhabitants do defray such compensation, then it shall be lawful for the said overseers to raise such sum as shall be necessary for that purpose; And that if such rate be so levied either on the inhabitants at large of such parish, or on the inhabitants of such part thereof as aforesaid, then such rate may be levied and recovered as poor's rates are leviable and recoverable.

*Buildings,
Use there-
of.* —

Levy of rate.

LXIII. Provided always, and be it enacted, with regard to public gas works and other works heretofore established within the limits of this Act, so far as relates to the operation of the provisions of this act in reference to businesses dangerous in respect of fire or explosion, or offensive or noxious, That such provisions shall not be deemed to apply to any such public gas works, and that if by any act of parliament now in force relating to gas companies to which such works belong, any extension of such works, or any additional works, or any other works be authorized to be erected or substituted, then such provisions shall not be deemed to apply to any such extension, addition, or substitution within the limits of the district now lighted from such first-mentioned works, and that such provisions shall not be deemed to apply to any premises entered or used for the purpose of distillation or the rectification of spirits, under the survey of the commissioners of excise or their officers.

63.
Exemption
of public
gas works.

Extension or
substitution
of works.

Distilleries.

LXIV. And now, for the purpose of dividing the district to which this Act is to apply into several smaller districts, for the convenient execution therein of this Act, and for appointing competent surveyors for superintending the same in each such district, and for regulating the duties of their office; Be it enacted, with regard to such districts, so far as relates to the appointment and alteration thereof, that at any time after this Act shall come into operation, and from time to time, it shall be lawful for the lord mayor and aldermen of the city of London, with reference to the city of London and the liberties thereof, and for the justices of the

*Surveyors,
their Dis-
tricts and
Duties.* —

64.
Appoint-
ment of dis-
tricts.

*District
Surveyors.*

peace for the county of Middlesex, the county of Surrey, the county of Kent, the city and liberties of Westminster, and the liberty of her Majesty's tower of London, in their general quarter sessions respectively, or any adjournment thereof, with reference to their respective counties, city, and liberties, and they respectively are hereby empowered, but subject, nevertheless, to the consent of one of her Majesty's principal secretaries of state, to appoint the districts to which the respective places within their jurisdiction shall belong for the purposes of this Act, and to unite, enlarge, and alter such districts for the more convenient distribution of the business.

65.

Appoint-
ment of sur-
veyors.

LXV. And be it enacted, with regard to the surveyors to be assigned to such districts, for the purposes of this Act, so far as relates to their appointment, That at any time after this Act shall come into operation, and from time to time, it shall be lawful for the said lord mayor and aldermen of the city of London, with reference to the city of London and the liberties thereof, and for the said justices of the peace in their general quarter sessions respectively, or any adjournment thereof, with reference to their respective counties, and they are hereby required, but subject, nevertheless, to the consent of one of her Majesty's principal secretaries of state, to nominate and appoint, as surveyors, such and so many discreet persons, of the full age of thirty years, and properly educated and skilled in the art and practice of building, as they the said lord mayor and aldermen and the said justices shall think fit.

66.

Practical
qualifica-
tions of sur-
veyors.

LXVI. And be it enacted, with regard to such surveyors to be hereafter appointed under this Act, except present district surveyors appointed to new districts, so far as relates to the ensuring the possession of due scientific and practical qualifications, That it shall be lawful for the commissioners of works and buildings, and they are hereby empowered to appoint three or more architects, surveyors or builders to examine, together with the said official referees, any persons who may present themselves to be examined for the purpose of obtaining a certificate of qualification, with the view

Examiners.

of becoming candidates for the office of surveyors of metropolitan buildings of any district within the limits of this Act; And that for that purpose it shall be lawful for such examiners from time to time to appoint such times as to them may seem fit, and from time to time to prescribe such course of examination as to them may seem fit, and to make any other rules for the regulation of such examination and the granting of certificates in respect thereof, subject nevertheless to the approval of the commissioners of works and buildings; and that when such rules shall have been registered by the registrar of metropolitan buildings, they shall continue to be in force until they shall be amended, altered or rescinded by other rules to be made by such examiners and so registered as aforesaid; And that unless one week before the election of a surveyor for any district created by this Act, or for any district in respect of which the office of surveyor may become vacant, there be produced by or on the part of any person being candidate for the said office, a certificate of such examiners, certifying that he has been examined, and that he was thereby found to be duly qualified for such office, to the town clerk of the city of London, or to the clerk of the peace for the county, city or liberty, it shall not be lawful for any justices, by this Act empowered to appoint surveyors, to appoint such person to be such surveyor, and that if such person be so appointed, his election to such office shall be void.

District Surveyors.

Examiners to prescribe rules.

Production of certificates of examina

LXVII. And be it enacted, with regard to such surveyors, so far as relates to the tenure of their office, That it shall be lawful for every such surveyor and he is hereby entitled to hold such his office of surveyor during the pleasure only of the said lord mayor and aldermen and of the said justices respectively.

67.

Tenure of office.

LXVIII. And be it enacted, with regard to such surveyors, so far as relates to their functions generally, That it shall be the duty of every such surveyor, and he is hereby required,—

68.

Functions generally.

To see that all the rules and directions of the Act are well and truly observed in and throughout his district; and for that purpose,

*District
Surveyors.*
—

To proceed from time to time in due course, upon the receipt of any notice, or if from ignorance or neglect, or from any other circumstance, notice of any work intended to be done have not been given, then, upon such work being observed by or being made known to him, to inspect the works intended to be done, or which shall have been commenced ; and to cause all the rules and directions of this Act in respect thereof to be strictly observed ; and also,

To attend and perform every thing required of him by this Act, whether with or without notice ; and also,

To inspect ruinous buildings and projections in danger at all times when needful, and to take all necessary measures thereupon ; and also,

To survey all buildings built, rebuilt, enlarged or altered by or under the superintendence of a district surveyor within any other district to which he shall be appointed by the official referees for that purpose ; and also,

To cause a book for registering all notices, informations, and complaints to be at all times kept at his office, and to enter in such book every notice, information, or complaint which shall be delivered or made to him, and any proceeding thereon by him taken.

69.
Disqualifi-
cations.

LXIX. And be it enacted, with regard to such surveyors, so far as relates to their disqualifications, That during the time that any such person shall act as a justice of the peace for the county in which his district shall be situated, it shall not be lawful for him, and he is hereby disqualified from holding the office of a surveyor or of deputy or an assistant surveyor for any district under this Act.

70.
Continuance
of present
surveyors, 14
Geo. III. c.
78.

LXX. And be it enacted, with regard to the surveyors who, at the time of this Act coming into operation, shall have been appointed under the act of the fourteenth year of the reign of King George the Third, mentioned in the Schedule (A.), hereto annexed, so far as relates to their continuance in office, and the application of this Act to them, That until they shall be re-

moved, it shall be lawful for them, and they are hereby entitled, to continue to be the surveyors for the purposes of this Act, and for the districts assigned to them at the time this Act shall come into operation, but subject to such alteration of such districts as may be made by virtue of any power in that behalf, and to act in all respects as if they had been appointed under this Act; and that every provision in this Act applicable to district surveyors, so far as relates to the exercise of the office of surveyor, and to their remuneration in that behalf, shall apply to them.

District Surveyors.

Subject to this Act.

LXXI. And be it enacted, with regard to every surveyor hereafter appointed, so far as relates to making a declaration of official fidelity, That, before any such surveyor shall act in pursuance of this Act, it shall be his duty, and he is hereby required, to make a declaration of official fidelity, which must be administered by the said lord mayor and aldermen in their court of aldermen, or by the said justices of the peace in their respective general quarter sessions, and must be in the form or to the effect following; that is to say,—

71.
Declaration of official fidelity.

“ I, A. B., being one of the surveyors appointed in pursuance of an Act made and passed in the eighth year of the reign of her Majesty Queen Victoria, intituled ‘ An Act for regulating the Construction, and the Use of Buildings in the Metropolis and its Neighbourhood,’ and commonly called the Metropolitan Buildings Act, do solemnly declare, that I will diligently, faithfully and impartially perform the duties of my office, and to the utmost of my power, skill and ability endeavour to cause the several provisions of the said Act to be strictly observed, and that without favour or affection, prejudice or malice, to any person whomsoever.”

And that if, before making such declaration, any such surveyor act in pursuance of this Act, then, on conviction thereof, he shall be liable to pay, for every day during which he shall so act before making such declaration, the sum of five pounds.

Penalty for acting before declaration made.

LXXII. And be it enacted, with regard to the sur-

72.

*District Surveyors.*Regulation
of duties.
Offices.

Attendance.

Return of
name and
residence.

73.

Surveyor
pro-tempore.Duty of de-
puty.

Fees.

veyors, so far as relates to the regulation of their official duties, That it shall be the duty of every surveyor for the city of London and the liberties thereof, and he is hereby required, to have an office, at his own expense, in such public situation as shall be approved by the lord mayor and aldermen; And that it shall be the duty of every other surveyor, and he is hereby required, to have an office, at his own expense, in some central part of the district to which he shall be appointed, as shall be approved by the justices of the peace in quarter sessions, within whose jurisdiction he shall act; And that it shall be the duty of every such surveyor, and he is hereby required, by himself, or by some other person in his behalf, to attend at his office every day (Sundays, Christmas-day and Good Friday excepted) from ten of the clock in the morning till four of the clock in the afternoon; And that immediately upon his appointment, and from time to time, upon every change of his residence, or of his place of business, or oftener if required, it shall be the duty of every surveyor, and he is hereby required, to make a return to the registrar of metropolitan buildings, and to the overseers of the poor of every parish or place within his district, of his name and place of abode and the place where such office shall be.

LXXIII. And be it enacted, with regard to such surveyor, so far as relates to the appointment of a deputy or substitute in certain cases, That if any surveyor shall be prevented by illness, or any other unavoidable circumstances, from attending to the duties of his office, then forthwith it shall be his duty and he is hereby required, but subject to the previous consent and approval of the official referees, to appoint some other surveyor, duly qualified as aforesaid, as his deputy to perform all such his duties for so long a time as he shall be so prevented from executing them; And that thereupon, during such time as aforesaid, it shall be the duty of such deputy surveyor and he is hereby required to perform all the duties of such surveyor, and that in all respects as if he were the surveyor appointed or confirmed under this Act; And that it shall be lawful for

such deputy surveyor and he is hereby entitled to receive the fees payable in respect of the services so performed by him in such district. *District Surveyors.*

LXXIV. And be it enacted, with regard to such surveyors, so far as relates to the filling up of vacancies, That if any vacancy shall happen through the death or removal of any surveyor, then, within one month thereafter, it shall be the duty of the lord mayor and aldermen or of the justices of the peace in general quarter sessions or any adjournment thereof, as aforesaid, and they are hereby respectively required, to appoint a successor as herein directed; And that, in the meantime, it shall be lawful for the official referees to direct the surveyor of any one or more of the other districts to perform the duties of surveyor for the vacant district; or if no district surveyor can be spared from his own district, to appoint some other competent person duly qualified as aforesaid for that purpose; And that every such surveyor is hereby entitled to receive the fees payable in respect of the services so performed by him in such vacant district. *74. Vacancies. Occasional services. Fees for services.*

LXXV. And be it enacted, with regard to the surveyors, so far as relates to the regulation of their business, That if it shall appear to the official referees that the district appointed for any surveyor is too extensive for the prompt discharge of his functions, then it shall be their duty to represent such their opinion to the lord mayor and aldermen of the city of London, or to the justices of the peace with whom the appointment of a surveyor for that district may rest; and for that purpose to transmit with their letter of representation a transcript of their "register of notices," with the results; And that if at any time it appear to such official referees, that on account of the pressure of business in any district, or on any other account, the surveyor of that district cannot discharge his duties promptly, as regards the builders and others engaged in building operations, and efficiently as regards the purposes of this Act, then it shall be lawful for such official referees, and they are hereby empowered, to appoint any other district surveyor to assist the surveyor *75. Regulation of business. Assistant surveyors*

*District
Surveyors.*

Duties of
assistants.

Fees.

76.
Superintend-
ence of sur-
veyors.

77.
Surveyor's
Fees.

of such district in the performance of his duties; or if no district surveyor can be spared from his own district, then to appoint some other competent person to give such assistance; And that with regard to all buildings surveyed by such assistant surveyor, and all other acts done by him, it shall be the duty of such assistant surveyor to make returns, and to act in all respects as if he had been appointed by the said lord mayor and aldermen, or by the said justices, to be the surveyor of such district; And that every such person shall be entitled to receive the fees payable in respect of the services so performed by him.

LXXVI. And be it enacted, with regard to such surveyors, so far as relates to the supervision of buildings, built, rebuilt, enlarged or altered by or under their professional superintendence, That it shall not be lawful for any such surveyor to survey any such building for the purposes of this Act; But that such building must be surveyed by another district surveyor, or by another surveyor to be appointed by the official referees for that purpose.

LXXVII. And be it enacted, with regard to such surveyors, so far as relates to their remuneration, That upon the expiration of one month after the roof of any building erected and surveyed under this Act, shall have been covered in, and all the walls thereof have been built to their full heights, and the principal timbers and floors shall have been fixed in their places, and upon the expiration of fourteen days after the completion of any addition, alteration and repair, and upon the expiration of fourteen days after each special service shall have been performed, and upon delivering to the owner of the building an account of the fees incurred, and upon tendering a receipt, signed with his christian and surname, and stating the amount of such account and the work done, it shall be lawful for the surveyor, and he is hereby entitled to receive from the builder, or from the owner, or from the occupier of the building for his time and trouble and expenses in causing the rules, regulations and directions of this Act to be observed, the several fees specified in the Schedule

of Fees (L.) hereunto annexed ; And that if, on tender of such receipt, any builder, owner or occupier who shall become liable to pay any such fee shall refuse to pay the same, then, upon application to any justice of the peace, it shall be lawful for such justice, and he is hereby required to summon the party complained of in the first instance, and if he do not appear, or if he fail to satisfy the said justices as to the refusal of payment as aforesaid, it shall be lawful for such justice, and he is hereby required to issue his warrant to levy the amount of such fee by distress and sale of the goods and chattels of the party so refusing, in like manner as poor's rates are by law recoverable, and if such fee be paid by the occupier, he shall be entitled to recover the amount thereof from the owner : Provided always, That if the work in respect of which such fee shall become payable have not been done in every respect agreeably to the directions of this Act, then it shall not be lawful for any surveyor to receive such fee ; And that if he shall so receive it, then, upon application to the official referees by any party interested in the building in respect of which such work shall have been executed, and upon its appearing that such fee has been received wrongfully, it shall be lawful for such official referees, and they are hereby authorized (if they think fit) to order the said surveyor to refund such fees.

District Surveyors.
Refusal of payment.

Fees to be paid only for work done agreeably to Act.

Refunding fees.

LXXVIII. And be it enacted, with regard to such surveyors, so far as relates to a return of the business done by them, and to the inspection thereof, That, within seven days after the first day of every month, it shall be the duty of every surveyor, and he is hereby required to make a return to the registrar of metropolitan buildings, enumerating therein the number and nature of all the several works executed within the previous month under his supervision, and the fees paid to him for the same, and also a copy of the list or register of notices served upon him, with the results thereof, and to keep in his office a copy of such return ; And that if any person shall apply to inspect the same, then on the payment of one shilling, it shall be open for inspection, at all reasonable times ; And with re-

78.
Surveyor's returns.

Inspection of returns.

District Surveyors.

Authenti-
cation and
effect of
returns.

gard to such return, so far as relates to the authentication and effect thereof, That every such return must be signed by such surveyor, and if so signed, it shall be deemed to be a certificate that all the works enumerated therein have been done in all respects agreeably to this Act, according to the best of his knowledge and belief, and that they have been duly surveyed by him; but no such return shall be any protection from, or hindrance to, any future proceedings in respect of works not executed according to the provisions of this Act, though the same may have been done before the making of such return.

79.

Penalty for
extortion,
negligence
or unfaith-
fulness.

LXXIX. And be it enacted, with regard to every surveyor, so far as relates to the discharge of his duties, That if any surveyor demand or wilfully receive any higher fee than he shall be entitled to under this Act, or if in his capacity of surveyor he receive a fee for any act or omission in respect of which he is not entitled to receive any remuneration, or if he refuse to refund any fee wrongfully received by him, in respect whereof the official referees shall have made an order to that effect, or if at any time he wilfully neglect his duty, or behave himself negligently or unfaithfully in the discharge thereof, then and in every or any such case it shall be lawful for any person to present a complaint in writing under his hand to the lord mayor and aldermen of the city of London, or the court of quarter sessions having jurisdiction over the district for which such surveyor shall act for the time being, at any sessions of the peace, quarter or general, either original, intermediate, or adjourned, and which complaint shall set forth the nature and particulars of the offence charged by the complainant against any such surveyor; and that the said lord mayor and aldermen or court of sessions, as the case may be, shall by order of court appoint a time for the hearing of the said complaint, and a copy of which order and of the said complaint shall be served by or for the said complainant on the said surveyor ten days at the least before the time appointed for the hearing of such complaint; and the said surveyor shall appear before the said lord mayor and aldermen or court of

Complaint to
justices.

Proceedings
thereon.

sessions, as the case may be, at the time and place so appointed for hearing the said complaint, to answer the same; and that if, upon the hearing of the complainant and of the surveyor, and the evidence respectively produced by or for them, it shall appear unto the said lord mayor and aldermen or court of sessions, as the case may be, that such complaint in whole or in part is well founded, then it shall be lawful for the said lord mayor and aldermen, or the said court of quarter sessions, as the case may be, and they are hereby respectively required, either to fine such surveyor in such sum of money not exceeding fifty pounds as they shall think fit, or to discharge him forthwith from his said office; And that if for any such cause such surveyor be discharged, he shall be incapable of being again appointed a surveyor for the purposes of this Act.

District Surveyors.
Decision.

Incapacitation of surveyor.

LXXX. And now, for the purpose of providing for the appointment of competent official referees to superintend the execution of this Act throughout all the districts to which it is applicable, and also to determine sundry matters in question incident thereto, as well as to exercise, in certain cases, a discretion in the relaxation of the fixed rules and directions of this Act, where the strict observance thereof is impracticable, or would defeat the object of this Act, or would needlessly affect with injury, the course and operation of this branch of business; Be it enacted, with regard to the official referees, so far as relates to their appointment, to their qualifications and to the tenure of their office, That it shall be lawful for one of her Majesty's principal secretaries of state, and he is hereby empowered to appoint two persons, being of the profession of an architect or surveyor, to be official referees of metropolitan buildings, and from time to time, as he shall think proper, to remove such official referees, and in their place to appoint other persons so qualified; And that while any such person shall so hold the office of official referee, it shall not be lawful for such person, and he is hereby expressly prohibited to act as surveyor, either alone or with any partner, or by an agent, or to act as

Official Referees.
80.

Appointment of two official referees.

Tenure of office.

Not to act as surveyors.

Official Referees.

Temporary
official
referee.

official referee in the case of any building or matter in which he shall act as architect, and that if an official referee be employed as architect as to any building or matter within the limits of this Act, then it shall be the duty of such official referee and he is hereby required to report thereon to the commissioners of works and buildings; and thereupon it shall be the duty of such commissioners of works and buildings and they are hereby required to appoint some other competent person to act in conjunction with the other official referee as to such building or matter.

81.

Their
functions
generally.

LXXXI. And be it enacted, with regard to such official referees, so far as relates to their functions generally, That it shall be the duty of such official referees and they are hereby required to superintend the execution of this Act, by the several district surveyors already existing, or hereby authorized to be appointed, and to perform the several matters to them respectively assigned by the provisions of this Act, and to determine all questions referred to them, whether expressly by this Act, or at the instance of any one or more of the parties concerned.

82.

Matters of
reference.

LXXXII. And be it enacted, with regard to the official referees, so far as relates to their jurisdiction, That if any doubt, difference or dissatisfaction, in respect of any matter within the limits of this Act, arise between any parties concerned, or between any party and any surveyor, or between any two surveyors, as to any act done or to be done in pursuance of this Act; or as to the effect of the provisions thereof in any case; or as to the mode in which the provisions and directions of this Act are or ought to be carried into effect; and particularly as to whether the requirements implied in terms of qualification, applied to sites, to soils, to materials, or to workmanship or otherwise, and denoting good, sound, fire-proof, fit, proper, or sufficient, are fulfilled in certain cases; or as to the district in which any building, matter or thing is to be deemed to be situate, especially in cases where such building, matter or thing is partly in one district and partly in another; or as to the expenses to be borne by the respective

owners of premises parted by the same party-walls, or the proportions thereof; or as to the proportions of the expense to be borne by the occupier, or by the owners of premises, in respect of any work executed or any other matter whatever; then it shall be lawful for any party concerned, and he is hereby entitled, to require the official referees to determine such matter, but so that such requisition be made in writing, and that it set forth, either generally or otherwise, the matters in respect of which the determination of the official referees is required; And that the determination of such referees, or of one of such referees, with the assent of the registrar of metropolitan buildings, as to all or any of the points in difference on which such referees shall make their award, and as to the costs, charges, and expenses of such reference, shall be binding on all parties to such reference.

*Official
Referees.*

One referee
may act.

LXXXIII. And be it enacted, with regard to the official referees, so far as relates to their authority in respect of any reference to them, and to the effect of their award upon the rights

83.

Award and
powers of
referees.

and interests of the owners and occupiers of property, That it shall be lawful for such referees and they are hereby empowered to exercise all such powers of arbitrators as they would have had in case they had been appointed under an order of her Majesty's Court of Queen's Bench at Westminster; And that if such award be given in writing, and be sealed by the official seal of the registrar of metropolitan buildings, it shall be as effectual as if made under an order of reference by such court, and shall be enforced by the said

Taking this clause in connection with the succeeding, the effect and force of these awards appears to be as follows:—So soon as they are made, they bind not only the persons whose interests are immediately affected by them, but taking effect, as it were, on the property in dispute, they are conclusive against all who either have or may have any property therein. But if any document of this description be produced as evidence in any cause, it is not to be considered as conclusive evidence of the matters contained therein, so as to preclude the parties from disputing them; but only as *prima facie* evidence, liable to be invalidated or rebutted by any other testimony brought forward.

Legal effect
of awards.

Official Referees.

Effect as to persons.

court in all respects as if made under an order of such court; And that it shall be binding and conclusive against every person, including the Queen's Majesty, her heirs and successors, claiming any estate, right, title, trust, use or interest in, to or out of the said premises or any part thereof, either in possession, reversion, remainder or expectancy, and against every other person whomsoever.

84.

Revocation of authority of official referee.

LXXXIV. And be it enacted, with regard to any reference to the said official referees, so far as relates to the revocation of their authority, That the power and authority of the official referees shall not be revocable by any party to such reference without the consent of all parties thereto; And that although any party shall not attend upon such reference, it shall be lawful for such official referees to proceed with the reference and to make their award.

Not to affect their award.

85.

Taking of evidence by the official referees.

LXXXV. And be it enacted, with regard to such reference, so far as relates to the evidence of any matter thereof, That it shall be lawful for the official referees, and they are hereby empowered by their summons in writing, sealed with the seal of office of the registrar of metropolitan buildings, to require the attendance of any person who may be able to give evidence in the matter of any reference to them, and to require by such summons the production of any documents to be mentioned therein; And that if in addition to the service of such summons an appointment of the time and place of attendance in obedience thereto, signed by one at least of the official referees before whom the attendance is required, be also served either together with, or after the service of, such summons, then if the party so summoned do not attend in obedience thereto, such party shall be liable to be proceeded against as for a contempt of court; And that every person whose attendance shall be required shall be entitled to the like conduct money and payment of expenses as for and upon attendance at any trial; And that no person shall be compelled to produce under any such summons any writing or other document that he would not be compelled to produce at a trial, or to attend on more than

Appointment of time and place.

Compensation for attendance.

Production of documents.

two consecutive days to be named in such summons ; And that it shall be lawful for the official referees, and they are hereby respectively authorized and required to administer an oath to such witnesses as may come before them, or in cases where affirmation is allowed by law, instead of an oath, to take their affirmation ; And that if upon such oath or affirmation, any person making the same, wilfully and corruptly give false evidence, then every person so offending shall be deemed to be guilty of perjury.

*Official
Referees.*

Administra-
tion of oaths.

Penalty for
false evi-
dence.

LXXXVI. And be it enacted, with regard to such award, so far as relates to the effect thereof as evidence of the matter thereof, That if on the trial or hearing of any cause or matter in any court of law or equity, or elsewhere, any copy of an award, signed and sealed with the seal of the said registrar, be produced, then it shall be the duty of all judges, justices and others, and they are hereby required to receive the same as *prima facie* evidence of the matters therein contained.

86.

Effect of
awards as
evidence.

LXXXVII. And be it enacted, with regard to the official referees, so far as relates to the declaration of official fidelity, That before any official referee shall act in pursuance of his appointment, it shall be his duty and he is hereby required to make the following declaration, to be administered by the chief baron or any other of the barons of her Majesty's Court of Exchequer ; that is to say,—

87.

Declaration
of official
fidelity.

“ I, A. B., do solemnly declare, That I will diligently, faithfully, and impartially execute the duties of an official referee in relation to matters arising under the provisions of the Act made and passed in the eighth year of the reign of her Majesty Queen Victoria, intituled ‘ An Act for regulating the Construction and the Use of Buildings in the Metropolis and its Neighbourhood,’ and commonly called The Metropolitan Buildings Act.”

LXXXVIII. And be it enacted, with regard to such official referees, so far as relates to the regulation of the business of their office, That when any matter is by this Act required, directed or permitted to be done by

88.

Regulation
of business
of the officia
referees.

Official Referees.

Official referees may delegate powers.

the official referees, the same may be done by either of them, with the assent of the registrar of metropolitan buildings, unless express provision to the contrary be made, and if done by any one of them with such assent, it shall be as valid and effectual as if done by both of them ; And that, subject to such restrictions and regulations as may be made in that behalf by the commissioners of works and buildings it shall be lawful for the official referees to appoint one of their number, under their hands and the seal of the registrar of metropolitan buildings, to make any inquiry or any survey which shall appear to them either necessary or expedient in order to enable them to determine any matters in reference.

Registrar of Metropolitan Buildings.

89.

Appointment of registrar.

LXXXIX. And, for the purpose of duly recording relaxations of the requisitions of this Act, made in pursuance of the provisions hereof in that behalf, and of providing for the revision from time to time both of such relaxations and requisitions, and of providing against the partial exercise of the powers of this Act, and for the more effectually providing for the due recording of the acts of the official referees, and for exercising a due control thereon ; Be it enacted, That it shall be lawful for the commissioners of works and buildings, and they are hereby authorized and required to appoint a registrar of metropolitan buildings ; And that such registrar shall hold his office during the pleasure of the said commissioners ; And that, subject to the provisions of this Act, it shall be lawful for the said commissioners to make rules for regulating the execution of the duties of the office of the said registrar ; And that it shall be the duty of such registrar to keep a seal, and to affix such seal to all documents made by the said official referees, and required to be sealed ; and to keep all the documents and records relating to the business of their office, and to register the same : Provided always, with regard to such registrar, so far as relates to the affixing the seal of office to any document, That if it shall appear to the said registrar that any such documents are contrary to law, or not complete in any of the requisite forms, or beyond

Tenure of office.

Rules of office.

Seal of office.

Use of seal of office.

the competence of the said official referees, either with regard to the provisions of this Act or any rules or regulations prescribed for their guidance, by the said commissioners of works and buildings, then it shall be the duty of the said registrar to refuse to affix the seal; And that thereafter, if the said official referees shall so require, it shall be his duty and he is hereby required to report the matter and the particular grounds and reasons for his refusal to the said commissioners; And that upon the receipt of such report it shall be lawful for the said commissioners to authorize the said registrar to affix the seal or to confirm his refusal: Provided always, with regard to such office of registrar, so far as relates to the execution of his duties in certain events, That if such registrar be ill or otherwise unable to discharge the duties of his said office, or if he be absent, then it shall be lawful for the said commissioners of works and buildings to appoint some other person to act temporarily in his behalf, and to assign to such person such part of the remuneration of the said registrar, or otherwise to remunerate him as the lords of the treasury shall appoint in that behalf.

*Registrar
of Metro-
politan
Buildings.*

Report of
objections by
registrars.

Authority of
commission-
ers of works.

Interim
registrar.

XC. And be it enacted, with regard to the registrar, so far as relates to the declaration of official fidelity, That before any registrar shall act in pursuance of his appointment, it shall be his duty and he is hereby required to make the following declaration, to be administered by the chief baron, or any other of the barons of her Majesty's Court of Exchequer; that is to say,—

90.
Declaration
of official
fidelity.

“I, A. B., do solemnly declare, That I will diligently, faithfully and impartially execute the duties of registrar in relation to matters arising under the provisions of an Act made and passed in the eighth year of the reign of her Majesty Queen Victoria, intituled ‘An Act for regulating the Construction and the Use of Buildings in the Metropolis and its Neighbourhood,’ and commonly called The Metropolitan Buildings Act.”

XCI. And be it enacted, with regard to such awards,

91.
Custody and

*Registrar
of Metro-
politan
Buildings.*

—
inspection of
records of
official re-
ferees.

Copies of
awards, cer-
tificates, &c.

Authentica-
tion of copy,
and fees
therefor.

92.
Office of re-
gistrar, and
regulation of
business.

certificate and other records of the said official referees, so far as relates to the custody and the inspection thereof, That all such awards, certificates and other documents relating to the business of their office shall be kept in the office of the registrar of metropolitan buildings; And that if, for the purpose of evidence or otherwise, any party require a copy of such award, or certificate or other document, or to inspect the same, then, on payment of the expense thereof, and of such fees as may be appointed in that behalf, it shall be lawful for such party, and he is hereby entitled to demand from the registrar an inspection thereof, or a copy thereof or extract therefrom; And that, on such payment and demand, it shall be the duty of such registrar, and he is hereby required to give, under his hand and seal of office, a copy of any such award, or any other document, to the person so demanding the same.

XCH. And be it enacted, with regard to the registrar of metropolitan buildings, so far as relates to his office or place of business, and to the regulation of the business thereof, That it shall be lawful for the commissioners of works and buildings, and they are hereby required to appoint, in some central and convenient situation within the city of London or the city of Westminster, an office for carrying on the business of the registrar of metropolitan buildings, and registering all documents relating to such business; and in such office it shall be the duty of such registrar and he is hereby required—

To keep a register of all matters referred to the official referees, and otherwise of all matters which shall come under their cognizance in pursuance of this Act; and also,

To keep and preserve all documents connected with the duties of official referees; and also.

To receive all notices requiring any act to be done by them, and to file and number them in the order in which they are received.

93.
Registration

XCHH. And be it enacted, with regard to all the awards and certificates, and all documents relating to

the business of the official referees, so far as relates to the registration thereof, That the same shall be registered not only chronologically in the order in which they are received, but according to the subject-matters thereof, and also according to the order of and in relation to the provisions of this Act.

Registrar of Metropolitan Buildings.
—
of awards,
&c.

XCIV. And be it enacted, with regard to such official referees and registrar, so far as relates to their remuneration, That it shall be lawful for her Majesty to grant to each of such official referees, and the said registrar a salary not exceeding one thousand pounds by the year, in four equal quarterly payments; And that if any such official referee or such registrar shall be appointed, or shall die, resign or be removed from office, in the interval between two quarterly days of payment, then he shall be entitled to a proportionate part of the salary for the period of such interval during which he shall hold such appointment.

94.
Remuneration of official referees and registrar.

XCV. Provided always, and Be it enacted, with regard to the said official referees and registrar, so far as relates to their qualifications, That if any person be or become commissioner, receiver, steward or agent for or on behalf of any owner of houses within the limits of this Act, then such person shall not be eligible to the office either of official referee or of registrar under this Act; And that if after having been appointed thereto, he shall become such commissioner, receiver, steward or agent, then he shall cease to be qualified to hold such office of official referee or registrar, and thereupon such office shall be vacant without prejudice nevertheless to any acts done by any such person in his capacity of official referee or registrar, so far as other persons are affected thereby.

95.
Disqualification of official referees and registrar.

Offices vacant.

XCVI. And forasmuch as the services of such official referees and of such registrar, will be employed chiefly on behalf of the localities comprised within the limits of this Act, it is expedient to provide for the payment of a portion of their salaries by means of a county rate, or by a rate in the nature of a county rate on such localities, in proportion to the assessed value of inhabited houses and buildings therein, or as near thereto as may

96.
Funds for defraying expenses of the official referees and registrar.

*Registrar
of Metro-
politan
Buildings.*
—

be ; Now, for that purpose, Be it enacted, with regard to such official referees and registrar, so far as relates to the payment of a portion of their salaries out of local funds, That it shall be lawful for the lord mayor and aldermen of the city of London, and they are hereby required, to direct the chamberlain of the said city, and for the justices of the peace for the several counties of Middlesex, Surrey and Kent, and they are hereby respectively required to direct the treasurer of such respective counties to pay, by two half-yearly payments, in the months of June and December in every year, to or into the hands of the cashier of the commissioners of works and buildings, on account of the said official referees and of the said registrar, the several sums of money hereinafter mentioned, as and by way of contribution to such salaries; that is to say,—

The city of London, and the		} the sum of £ 100
liberties and the suburbs		
thereof		
The county of Middlesex	1,000
The county of Surrey	320
The county of Kent	80
		<hr/>
		£ 1,500
		<hr/>

And it shall be lawful for the said justices, and they are hereby empowered and required to cause the same to be levied by a rate upon the several parishes and places within the limits of this Act, in such amounts as to such justices may seem proper, having regard to the assessed value of the inhabited houses and the buildings in such places respectively, in addition to the county rate in respect thereof; And that for the purpose of levying such sums, they shall be deemed to be part of the county rate, and leviable by all the ways and means by which a county rate is leviable, and subject in all respects to the legal incidents of a county rate.

Nature of
levy.

97.

Payments of
official re-
ferees and
registrar out
of consoli-
dated fund.

XCVII. And be it enacted further, with regard to the official referees and registrar, so far as relates to the payment of the balance of their salaries, That such balance shall be payable and paid out of the consoli-

dated fund of the United Kingdom of Great Britain and Ireland.

XCVIII. And be it enacted, with regard to the fees payable to the registrar, so far as relates to the appointment thereof, and to the application thereof, That from time to time it shall be lawful for the commissioners of the treasury to appoint such fees to be paid in respect of the services to be performed by the said official referees or by the said registrar, as shall be deemed requisite to defray the expenses of the said office or incident to such services, and the salaries or other remuneration of any persons employed under the registrar in the execution of this Act, with the sanction of the commissioners of the Treasury, and which are not otherwise provided for by this Act; And that the balance, if any, shall be carried to the consolidated fund of the United Kingdom, and be paid accordingly into the receipt of her Majesty's exchequer at Westminster; And that it shall be lawful for the commissioners of the treasury to regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for; And that it shall be the duty of the registrar and he is hereby required to cause a list of the fees so appointed by virtue of this Act to be fixed up in some conspicuous part of his office.

*Registrar
of Metro-
politan
Buildings.*

98.

Fees of office
and applica-
tion thereof.

Balance to
consolidated
fund.

Regulations
as to receipt,
custody and
accounts.

List of fees
to be hung
up.

XCIX. Provided always, and Be it enacted with regard to the officers appointed by or by virtue of this Act, so far as relates to the functions, appointment, and tenure of office of such officers, that any appointments to such offices which shall be made by virtue of this Act, shall be made subject to any provision that may be made by any act of parliament hereafter to be passed, for assigning other duties than those to be imposed by virtue of this Act; and such offices shall be held not only subject to the pleasure of the officers and justices by whom such appointments shall be made, but also subject to the provisions of any future act of parliament in relation thereto.

*Officers
generally.*

99.

Appoint-
ments of
officers sub-
ject to regu-
lation by any
future act.

C. And now, for the purpose of regulating sundry legal proceedings, Be it enacted, with regard to any

*Legal Pro-
ceedings.*

100.

Legal Proceedings. distress for any sum of money to be recovered by virtue of this Act, so far as relates to the remedying of any damage occasioned by any irregularity therein or in reference thereto, That notwithstanding there be any defect of form in the proceedings relative to any such distress, neither the distress itself shall be deemed unlawful, nor shall the party making the same be deemed a trespasser *ab initio* ; But that if any irregularity be committed by any party, then, subject to the conditions in this Act prescribed with regard to actions brought for any thing done in pursuance thereof, it shall be lawful for the person aggrieved by such irregularity and he is hereby entitled to recover full satisfaction for the special damage only, and that by action on the case, and not by any other action whatsoever.

Informalities
in distress.

Action for
damages.

101. CI. And be it enacted, with regard to any action for any irregularity or other proceeding, so far as relates to the tender of amends or payment of money into court in respect thereof, That if, before such action be brought, the party who committed or caused to be committed any such irregularity or wrongful proceeding, make or cause to be made tender of sufficient amends, then the plaintiff shall not be entitled to recover in such action ; And that although such tender shall not have been made, yet if at any time before issue joined the court in which such action shall be depending, or a judge of any of the superior courts grant leave, then it shall be lawful for the defendant to pay into court any sum of money, by way of compensation or amends, in such manner and under such regulations, as to the payment of costs and the form of pleading, as is and are customary and in force in the said superior courts.

Payment of
compensation
into
court.

102. CII. And be it enacted, with regard to every sum of money by this Act, or by any award or certificate or other proceeding in pursuance of or in accordance with this Act, charged upon any person in respect of any work done in pursuance of or in accordance with this Act, so far as relates to the recovery of such sum of money, That if any party claim any such sum of money then it shall be lawful for any one justice of the peace to summon the person on whom such sum is alleged to

Recovery of
money under
awards.

be charged before any two justices; or if the matter arise within the district of the metropolitan police, then before any police magistrate having jurisdiction within that district; and if such award or certificate be produced, or if such other proceeding be proved by the oath of the party claiming or of any other credible witness, and if it be proved by the oath of such party or other witness that such sum of money is still due, then it shall be lawful for such justices or such police magistrate, and they respectively are hereby required to issue a warrant to levy the amount thereof, and also the costs of the proceeding to be levied by distress of the goods and chattels of the person in default; And if such person have no goods and chattels whereon to distrain, or if such goods and chattels be insufficient for that purpose, then it shall be lawful for such justices or police magistrate, or for any other justice or police magistrate, to commit the person in default until the amount of such sum so due, and of such costs, shall have been fully paid, or until the party shall be discharged by or in accordance with the provisions of any act for the relief and discharge of insolvent debtors.

Legal Proceedings.
—

Distress.

Imprisonment.

CIII. And be it enacted, with regard to all offences against the provisions of this Act for which no other proceeding is provided, so far as relates to the prosecution thereof, That it shall be lawful to proceed by complaint before any one justice of the peace, or before a police magistrate as aforesaid; And that it shall be lawful for such justice to summon the party against whom such complaint shall be made; And that if such party fail to appear in pursuance of such summons, then it shall be lawful for such justice or magistrate, or any other justice or magistrate, to issue a warrant under his hand and seal, to compel the appearance of such party; And that on conviction of the offender before two justices, or before any police magistrate, it shall be the duty of such justices or magistrate, and they are hereby required, to cause the amount of the penalty hereby imposed in respect of such offence, and of the costs of any such proceeding in respect of such offence, to be levied by distress of the goods and chattels of the

103.

Prosecution of offences.

Complaint.

Summons.

Compulsory appearance.

Distress.

Legal Proceedings.

Imprisonment.

offender ; And that if such offender have no goods and chattels whereon to distrain, or if they be insufficient for that purpose, then it shall be lawful for such justices or magistrate, or for any other justice or magistrate, and they are hereby empowered, either on failure of such distress or in the first instance, to commit the offender for any period not exceeding three months, or till he shall have paid the full amount of such penalty and such costs.

104.

Removal of orders, &c. into superior courts ;

CIV. And be it enacted, with regard to every order which shall be made by virtue of or under this Act, and to any other proceeding to be had touching the conviction of any offender against this Act (except proceedings touching the conviction of any person offending for carrying on a trade or business offensive, noxious or dangerous, contrary to this Act, otherwise than those hereinbefore specified), That it shall not be lawful for any person to remove such order or other proceeding by certiorari, or any other writ or process whatsoever, into any of her Majesty's courts of record at Westminster ; and every such order and other proceeding is hereby declared not to be so removable.

Certiorari.

105.

Appeal from convictions as to penalties.

CV. And be it enacted, with regard to any conviction for any offence in respect of which a penalty is by this Act imposed, so far as relates to the appeal from any such conviction in respect thereof, That if any party be dissatisfied with the decision of the justices in any case in which such penalty may be proceeded for, and if within four days after such decision, notice be given by or on behalf of such party to the party appealed against of his intention to appeal against such decision, and of the grounds of such appeal ; and if the appellant enter into a recognizance with two sufficient sureties conditioned to prosecute such appeal, and to abide the order of the court, and to pay to the party appealed against such costs (if any) as shall be awarded against him, then it shall be lawful for such party so dissatisfied to appeal against such conviction to the justices of the peace at their general quarter sessions of the peace, to be holden within four months after such conviction ; And that if within such period of four days

Proceedings thereon.

such appellant have entered into such recognizance as is herein required, then it shall be lawful for such justices, and they are hereby empowered to proceed to hear and examine on oath into the cause and matters of such appeal (which oath they are hereby empowered to administer), and to determine the same, and to award such costs to be paid by either of the said parties as they think proper, and the order, judgment and determination of the said justices shall be binding and conclusive.

Legal Proceedings.

CVI. And be it enacted, with regard to every penalty or forfeiture incurred under this Act, so far as relates to the limitation of proceedings for the recovery thereof, That if, within six calendar months next after such penalty or forfeiture shall have been incurred, an action or prosecution be not brought or commenced against the person liable in respect thereof, then thereafter it shall not be lawful for any person to bring such action or commence such proceeding in respect of such penalty or forfeiture.

106.

Limitation of actions for penalties.

CVII. And be it enacted, with regard to every such penalty or forfeiture, so far as relates to the recovery and the appropriation thereof, That it shall be lawful for any party to sue or proceed for the same; And that if such penalty be not otherwise specifically appropriated, then the person so suing or proceeding shall be entitled to receive one-half thereof for his own benefit, and the other half shall be applied to her Majesty's use, and shall be paid to the sheriff of the county, city or town where the same shall have been imposed; and that all convictions before justices shall be returned to the court of quarter sessions, under the provisions of an act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties and Forfeitures, and Recognizances estreated," and shall be paid to the sheriff of the county, city or town, and shall be duly accounted for by him.

107.

Recovery of penalties.

Appropriation.

3 Geo. IV. c. 46.

CVIII. And, for regulating proceedings against persons acting in pursuance of this Act; Be it enacted, with regard to any action or suit against any person

108.

Regulation of actions against per-

Legal Proceedings.

sons acting
under this
Act.

Limitation
of action.

Notice of
action.

Venue in
London.

in respect of any act or thing done or intended to be done in pursuance of this Act, so far as relates to the limitation thereof, and to the notification thereof to the offending party, and to the venue thereof, and to the pleadings therein, and to the evidence of the matters thereof, and to the verdict therein, and to the judgment of the court thereon, and to the costs of such action, and to the recovery of such costs, That, after the expiration of six months next after the fact committed, it shall not be lawful to bring any such action or suit against any person in respect of any such act; And that if twenty-one days at the least before the commencement of the action or suit, notice in writing of an intention to bring such action or suit, and of the grounds of action, be not given to every person against whom such action or suit shall be brought, then it shall not be lawful for any person to bring any such action or suit against any person in respect of any such act; And that if the cause or matter of any such action or suit arise within the said city of London or the liberties thereof, then such

With regard to the protection afforded by this statute to those who *bonâ fide* act in pursuance of its provisions, it may be observed generally, that if the intention is, fairly and honestly to act as the statute directs, although it turn out that the thing done is not justified by the statute, yet its protection may be claimed. If it were otherwise, these protecting clauses would be nugatory; for a party who pursues the enactments correctly as well as honestly, has no need of protection, for no action would lie against him, if the law were not infringed. The object is to protect those who, intending to act on the provisions of the statute, mistake its directions, and err without fraud or malice. Under the former act, it was held, that if a person, *bonâ fide* intending to pursue the authority of the statute, erected a party-wall, without, in fact, pursuing the directions therein given, and thereby injured his neighbour, he was liable to an action; but the action must be brought after twenty-one days' notice, and within three months of the injury done.—*Pratt v. Hillman*, 6 D. & R. 360; 4 B. & C. 269.

The former act, which authorized the raising of a party-wall, did not protect a party from liability for any collateral damage resulting from the building so erected; and an action was held maintainable by the occupier of an adjoining house, on a case for heightening and building on a party-fence-wall, whereby his windows were darkened.—*Wells v. Ody*, 1 M. & W. 452; 7 C. & P. 410.

action or suit must be laid in the city of London, and not elsewhere; And that if the cause of any action or suit arise in any part of the limits aforesaid, out of the said city of London and liberties thereof, then it must be laid and tried in the county of Middlesex, and not elsewhere; And that in every such action or suit it shall be lawful for the defendant, and he is hereby entitled, to plead the general issue; and at the trial to be had thereof, to give this Act and the special matter in evidence, and to prove that the matter or thing for which such action or suit is brought was done in pursuance and by the authority of this Act; And that if, upon the trial of such action, it appear that the said matter or thing has been done by the authority or in pursuance of this Act, or if it

appear that such action or suit was brought before the expiration of twenty-one days after such notice given as aforesaid, or if it appear that sufficient satisfaction was made or tendered before such action was brought, or if upon plea of payment of money into court, it shall appear that the plaintiff has not sustained damages to a greater amount than the sum paid into court, or if any such action or suit be not commenced within the time herein for that purpose limited, or if it be laid in any other county or place than as aforesaid, then and in every such case it shall be the duty of the jury, and

In an action for such an injury, no notice is necessary, nor need it be brought within three months of the time of building the wall.

If any act of trespass complained of, was done with a *bonâ fide* intention to pursue the directions of the statute, though it be not justified by it, the defendant is entitled to notice of action, and under the plea of not guilty, the objection of want of notice may be taken. Under s. 100, of the former Building Act, no action could be commenced more than three months after the act complained of had been done. This period is now extended to six months. It was decided under the former statute, with reference to this provision, that where *A.* had begun to build a party-wall, partly on the soil of *B.*, more than three months before the action, but had not completed it till within that time, that *B.* was entitled to recover for such part of the trespass as was committed within the time limited; but that if nothing had been done within the three months, he must bring ejectment.—*Trotter v. Simpson*, 5 C. & P. 51, Parke.

Legal Proceedings.

—
Venue in Middlesex.

Plea and evidence.

Verdict.

Legal Proceedings. they are hereby required to find for the defendant; And that if a verdict be found for the defendant, or if the plaintiff in any such action or suit become nonsuited, or discontinue or suffer a discontinuance of any such action or suit, or if judgment be given for the defendant therein, on demurrer or by default or otherwise, then the defendant shall be entitled to have judgment to recover full costs of suit, and to such remedy for recovering the same as any defendant shall have by law.

Costs. The former act gave treble costs of suit.

109. *Security for costs.* CIX. And further, for the prevention of vexatious litigation, Be it enacted, with regard to every action in respect of any matter or thing done or intended to be done in pursuance of this Act, so far as relates to the costs of such action, That if the defendant apply to the superior court at Westminster in which such action is pending, or to any judge of any of the said courts, then it shall be lawful for such court or any such judge to require the plaintiff to give such security as such court or judge shall think fit, for the payment of all costs, charges and expenses incurred or to be incurred in and about the said action, and which shall be or become payable by him on the taxation thereof by the proper officer.

110. *Prosecutions for preventing neglect or evasion of this Act.* CX. And be it enacted, with regard to any penalty or forfeiture incurred by any default in complying with the provisions of this Act, so far as relates to proceedings for the recovery thereof, That, any time within three months after such penalty or forfeiture shall have been incurred, it shall be lawful for any surveyor appointed or confirmed by virtue of this Act, and all other persons, and they are hereby entitled to commence and prosecute proceedings for the recovery thereof, or for the recovery of the expenses of pulling down or altering of any building against any owner, occupier, builder, workman or other person, or for any default made in complying with the provisions of this Act: Provided always, That if such proceedings be taken by any person, except one of the surveyors, or except the official referees, then seven days' notice of the intention to commence such proceedings must be given at the office of

Notice of action.

the surveyor of the district, and at the office of the registrar of the metropolitan buildings.

CXI. Provided always, and be it enacted, with regard to the owners of any building, fence, ground, land, or tenement, so far as relates to their liabilities in respect of expenses incurred in respect of such premises or otherwise, That in all cases, whatever may be the nature of the interest in any such premises of the person entitled to the immediate possession thereof, or of the occupier thereof, such person entitled to the immediate possession of such premises, or such occupier, shall in the first instance bear all costs and expenses by this Act imposed on the owner thereof, and shall perform all duties by this Act imposed on such owner; subject, nevertheless, to any right or claim which such person or such occupier may have to be repaid such costs and expenses, and to be indemnified in respect of such duties, according to the provisions of this Act, according to the nature and extent of the covenants or agreements under which such person or occupier may hold such premises, as fully and effectually as if such covenants or agreements were herein recited.

Miscellaneous.

111.

Liability of owners and occupiers for expenses, &c. under this Act.

CXII. And be it enacted, with regard to notices by this Act required, so far as relates to the service thereof upon the owner or occupier of any building, fence, land, ground or tenement, That every such notice must be given as follows; that is to say,—

112.
Notifications.

If such owner be a married female, other than a *cestuique* trust in regard to such property, then such notice must be given to the husband of such married female; or,

Married females.

If such owner be an infant, idiot, or lunatic, or *cestuique* trust, then such notice must be given to the guardian, trustee or committee of such infant, idiot, or lunatic, or *cestuique* trust; or,

Infants, idiots, or lunatics.

If such owner, husband, trustee, guardian or committee is not known or cannot be found, then such notice must be given to the occupier of such building, fence, land, ground or tenement to which it shall relate; or,

Owners unknown.

If such building, fence, land, ground or tenement

Buildings unoccupied.

Miscellaneous.

be unoccupied, then such notice must be affixed to some conspicuous part of such building, fence, land, ground or tenement, at a height of not more than nine feet from the ground :

Immediate
landlord.

And if the person in the occupation of any building, fence, land, ground or tenement, in respect of which notice is to be given, allege that he is a tenant from year to year, or for any less term, or a tenant at will, and not the owner thereof, within the intent and meaning of this Act, then such notice must be given to the immediate landlord of such occupier ; and it shall be the duty of such occupier, and he is hereby required to inform any person by whom such notice shall be required to be given, or any other person applying on his behalf, of the name, place of residence, or place of business of such owner or landlord, or of his agent or other person by whom the rent of such building, fence, land, ground or tenement shall be received ; and if such owner or

Part owner-
ship.

landlord be not in receipt of the whole of the rents or profits of such building, fence, land, ground or tenement ; and if any notice shall be served upon such owner or landlord, then, immediately upon the receipt thereof, it shall be his duty and he is hereby required to transmit to his immediate landlord or his agent, and also to any other

Notice to one joint tenant, or tenant in common, would be held to be notice to all ; and if one paid the whole expense, he might recover their proportionate shares from the others, (see also s. 50.) This was not the case under the old act, but a lengthy, tedious, and almost nugatory legal process was necessary, in order to fix their proportions of such expenses upon the several tenants in common.

person being part owner in such building, fence, land, ground or tenement, or in receipt of the rents or profits thereof under the same immediate landlord, or to the agent of such person, a copy of such notice, and so on in turn, it shall be the duty of every landlord, agent, or other person by whom such notice shall be received, to transmit it to any such landlord, agent or other person being part owner of any such building, fence, land, ground or tenement, to the intent that every person affected by the work or proceeding to which such notice

relates may have due notice thereof: Provided always, with regard to every such notice, so far as relates to the service thereof upon any such owner, That if it be served upon the immediate landlord of the occupier or upon his agent, by or on behalf of the person by whom it is hereby required to be served in the first instance, then, although it may not be served by such immediate landlord upon any other landlord or owner, such service is to be deemed to be sufficient service; But that nevertheless, if any owner suffer damage by the failure of any other person, being either the occupier or any person holding under such owner, to serve such notice, then such owner shall be entitled to recover the amount thereof against such person by whom such damage shall have been occasioned; And that every notice served under this clause, on any person, must contain a copy of the provisions thereof, so far as they require him to transmit the same to his immediate landlord, or the agent of such landlord.

Miscellaneous.

Service of Notices.

Damage arising from defective service.

Requisites of notice.

CXIII. And be it enacted, with regard to notices by this Act required, so far as relates to the mode of service thereof upon the occupier of any building or ground, That if such notice be intended for the occupier of any building or ground, then it must be given either personally or by leaving the same with some inmate at the premises, or it must be affixed as aforesaid.

113.

Mode of service upon occupier.

CXIV. And be it enacted further, with regard to all such notices, so far as relates to the mode of service thereof upon owners by delivery, That every such notice (except such notice as may, according to the provision in that behalf, be sent by post,) must be given either personally or by leaving the same with some inmate at the usual place of abode of such party, or if that be not known, then at his last known place of abode; And that every such notice, when so given to such persons respectively as aforesaid, or left at the last known place of their respective abodes, or when so affixed as aforesaid, according to the cases hereinbefore mentioned, shall have the same effects and consequences as if given to the actual owner.

114.

Mode of service upon owners, by delivery.

Effect of notice.

CXV. And be it enacted further, with regard to

115.

Mode of ser-

Miscellaneous.

vice upon
owners, by
transmis-
sion.

notices, so far as relates to the mode of service thereof by transmission, That if any owner, upon whom the same is required to be served, be not within the limits of this Act, or have not, within the limits of this Act, any agent acting in his behalf in the matter of the premises to which the notice refers, then it shall be lawful to give notice by post-letter, duly registered according to the practice for the time being adopted with regard to letters transmitted by post; but so that, nevertheless, such letter be posted in such time as will afford to the person addressed, after the receipt of such letter, the full period of notice required in the case.

116.
Notices for
surveyors,
and official
referees.

CXVI. And be it enacted, with regard to notices, so far as relates to the service thereof upon the surveyors and upon the official referees, That if the notice relate to the surveyor, then such notice must be served at the office of the surveyor; And that if the notice relate to the official referees or any of them, then such notice must be left at the office of the registrar of metropolitan buildings.

117.
Consents by
incapaci-
tated per-
sons.

CXVII. And be it enacted, with regard to consents by this Act required to be given by the owner or occupier of any building or ground, so far as relates to the making thereof on behalf of incapacitated persons, That if such owner or occupier be a married female, not being a *cestuique* trust in regard to the property to which such consent relates, then such consent must be given by the husband of such married female; or that if such owner or occupier be an infant, idiot, or lunatic, or *cestuique* trust, then such consent must be given by the guardian, trustee, or committee of such infant, idiot, or lunatic, or *cestuique* trust; or that if such owner or occupier, husband, trustee, guardian, or committee be not known or cannot be found, then, with a view to protect the interests of such parties, as well as to facilitate the purposes of this Act, it shall be lawful for the official referees, and they are hereby authorized by writing duly sealed by the registrar of metropolitan buildings, to give such consent as may be requisite, upon such terms and subject to such con-

ditions as may seem fit to them, having regard alike to the nature and purpose of the subject-matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given. *Miscellaneous.*

CXVIII. And be it enacted, with regard to the following documents, so far as relates to the payment of stamp duty in respect thereof, That every certificate and every award required to be made or signed by the surveyor or the official referees, shall be and is hereby exempted from stamp duty. 118.
Exemption from stamp-duty.

CXIX. And be it enacted, That this Act shall be deemed to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without specially pleading the same. 119.
Public Act.

CXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of parliament. 120.
Amendment of Act.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)—(see Sec. 1.)

Containing a Description of the ACTS and PARTS of ACTS repealed by this Act.

Date of Act.	Title of Act.	Extent of Repeal.
1st.—14 Geo. III. c. 78. (1774.)	An Act for the further and better regulation of buildings and party-walls, and for the more effectually preventing mischiefs by fire within the cities of London and Westminster, and the liberties thereof, and other the parishes, precincts and places within the weekly bills of mortality, the parishes of Saint Mary-le-bon, Paddington, Saint Pancras, and Saint Luke at Chelsea, in the county of Middlesex; and for indemnifying, under certain conditions, builders and other persons against the penalties to which they are or may be liable for erecting buildings within the limits aforesaid, contrary to law.	Wholly; except so far as any such Act may repeal any other Act either wholly or partly; and except as to offences committed, penalties incurred, and fees payable, and any proceedings taken or commenced, or which might be taken or commenced, under the said Act, on or before the said first day of January one thousand eight hundred and forty-five; and except the whole of the several sections of the said Act which relate to the keeping of fire-engines and ladders and fire-cocks (ss. 74, 75), and to the fees or rewards to turncocks and engine-keepers (s. 76), and to the payment of such rewards or fees (ss. 77, 78), and to providing of engines by parishes (ss. 80, 81), and to the payment of the expenses and rewards out of the poor-rates (s. 81), and to the exemption of watermen and others from impressment, or the liability to serve either as mariners or as soldiers (s. 82), and to the application of insurance-money on houses burnt (s. 83), and to the punishment of servants for carelessly firing a house (s. 84), and

SCHEDULE (A)—*continued*.

Date of Act.	Title of Act.	Extent of Repeal.
2d.—50 Geo. III. 75. (1810.)	An Act to amend an Act of the fourteenth year of his present Majesty for the better regulation of buildings and party-walls; and for the more effectually preventing mischiefs by fire within the cities of London and Westminster, by permitting John's Patent Tesseræ to be used in covering of houses and buildings within the places therein mentioned.	to the attendance of peace and parish officers at fires (s. 85), and to legal proceedings in respect of accidental fires (s. 86), and any other part of the said Act, so far as it is necessary for giving full effect to the respective purposes of such several unrepealed sections. Wholly.
3d.—3 & 4 Vict. c. 85. (1840.)	An Act for the regulation of chimney sweepers and chimneys.	So much thereof as relates to the construction and regulation of chimneys and flues within the limits of this Act.

SCHEDULE (B.)—(*see* Sec. 5 & 7.)

PART I.

LIST of BUILDINGS, of whatever Class, placed under Special Supervision.

Bridges, embankment walls, retaining walls, and wharf or quay walls:

And her Majesty's royal palaces, and any building being in the possession of her Majesty, her heirs and successors, or employed for her Majesty's use or service:

And any common gaols, prisons, houses of correction, and places of confinement under the inspection of the inspectors of pri-

*Schedules.*SCHEDULE (B.)—PART I.—(*continued.*)

sons, and Bethlem hospital, and the house of occupations adjoining :

And the Mansion-house, Guildhall and Royal Exchange of the City of London :

39 & 40 Geo. III. c. lxxxix. And the offices and buildings of the Governor and Company of the Bank of England already erected, and which now form the edifice called “The Bank of England,” and any offices and buildings hereafter to be erected for the use of the said governor and company, either on the site of or in addition to and in connexion with the said edifice :

And the buildings of the British Museum already erected or to be erected for the like purposes :

9 Geo. IV. c. cxiii. And the erections and buildings authorized by an act passed in the ninth year of the reign of his late Majesty King George the Fourth, for the purposes of a market in Covent Garden :

And the warehouses of or belonging to the St. Katharine Dock Company, commonly called the New Street and Cutler Street warehouses, and the Haydon Square warehouses, purchased by the said company from the East India Company :

And all other buildings exempted by any act of parliament from the operation of the act passed in the fourteenth year of his late Majesty King George the Third, and by this Act repealed, except buildings included in the second part of this schedule.

PART II.

LIST of BUILDINGS of whatever Class exempted from Supervision.

6 Geo. IV. c. cv. And the warehouses of or belonging to the Saint Katharine Dock Company, and situate in the parish of Saint Botolph-without-Aldgate, and in the precinct of Saint Katharine, near the Tower of London, in the county of Middlesex :

9 Geo. IV. c. cxvi. s. 99. And the warehouses and buildings of or belonging to the London Dock Company, comprehended within the wall of the said company, as set forth in an act passed in the ninth year of the reign of his late Majesty King George the Fourth :

1 & 2 Vict. c. ix. And the several warehouses and buildings of or belonging to the East and West India Dock Company, established by an act made in the first year of the reign of her present Majesty :

3 & 4 Will. IV. c. xxxvi. and 5 & 6 Will. IV. c. lvi. s. 126. And the buildings erected or to be erected by the London and Birmingham Railway Company, established and incorporated by an act passed in the third year of the reign of his late Majesty King William the Fourth, within and in connexion with the works of their railway, by virtue of the several acts relating thereto :

And the buildings and structures belonging to any other dock or railway authorized to be executed by any act of parliament.

SCHEDULE (C.)—PART I.—(see Sec. 5.)

RULES for determining the Classes and Rates to which Buildings are to be deemed to belong for the purposes of this Act, and the Thicknesses of the Walls of Buildings of such Rates.

Classes of Buildings.

For the purposes of this Act, all buildings of whatever kind, subject to the provisions thereof, are to be deemed to belong to one or other of the following three classes; that is to say,

First Class.

If a building be built originally as a dwelling-house, or be occupied, or intended to be occupied as such,—then it is to be deemed to belong to the first or dwelling-house class.

Second Class.

If a building be built originally as a warehouse, storehouse, granary, brewery, distillery, manufactory, workshop or stable, or be occupied or intended to be occupied as such, or for a similar purpose,—then it is to be deemed to belong to the second or warehouse class.

Third Class.

If a building be built originally as a church, chapel or other place of public worship, college, hall, hospital, theatre, public concert-room, public ball-room, public lecture-room, public exhibition-room, or occupied or intended to be occupied as such, or for a similar purpose, or otherwise used, or intended to be used, either temporarily or permanently, for the assembling of persons in large numbers, whether for public worship, business, instruction, debate, diversion or resort,—then it is to be deemed to belong to the third or public-building class.

Alteration of Class.

And if any room, whether constructed within any other building or not, and whether included in the aforesaid classes or not, be used at any time for the public or general congregation of persons,—then the building containing such room is to be deemed a building of the third or public-building class.

Or if a building originally built, or subsequently altered, so as to bring it within any one class, be subsequently converted into or used as a building of another class,—then it is to be deemed to belong to such other class; and, as to it, all the conditions prescribed with regard to buildings of the same rate of such other class must be fulfilled, as if it had been originally built of

Schedules.
—SCHEDULE (C.)—PART I.—*continued.*

such class ; subject nevertheless to such modifications as shall be sanctioned by the official referees on a special supervision thereof.

Or if a building be used partly as a dwelling-house and partly for any purpose which would bring it within the second or warehouse class, then it is to be deemed to belong to the said second or warehouse class ; and as to it, all the conditions prescribed with regard to buildings of the same rate of such class must be fulfilled, as if it had been originally built of such class, subject nevertheless to such modifications as shall be sanctioned by the official referees on a special supervision thereof.

Rates of Buildings.

And the buildings included in the said classes are to be deemed to belong to the rates of those classes, according to the conditions of height, area and number of stories, set forth in the following tables ; which conditions are to be determined according to the following rules :—

Rule for ascertaining Height.

The height of every building is to be ascertained by measuring from the surface of the lowest floor of the building, up to the underside of the ceiling of the topmost story at the highest part thereof, whether such story be within the roof or not.

And if there be no ceiling made or intended to be made to the topmost story,—then by measuring from the surface of such lowest floor of the building up to the underside of any tie-beam, collar-beam, or other substitute for a tie-beam to or within the roof of the building, and to the highest part of such roof ; and the level of the under-side of such tie-beam, or such substitute for a tie-beam, is in such case to be taken to mean the ceiling of the topmost story.

And if there be no tie-beam, collar-beam, or other substitute for a tie-beam, to or within the roof of any building,—then up to a level three feet below the level of the under-side of the ridge-piece or substitute for a ridge-piece to the roof of such building.

Rule for ascertaining Area.

And the area of every building is to be determined by the number of squares contained in the surface of any floor which shall contain the greatest number of squares at or above the principal entrance to such building ; including in such surface the area of all the external walls and such portions of the party-walls as belong to such building, but excluding from such surface the area of any attached building or office, area, balcony, or open portico.

SCHEDULE (C.)—PART I.—*continued.**Schedules.*

Rule for ascertaining the Capacity of any Building of the Second Class.

And the capacity or cubical contents of any such building is to be ascertained by measuring according to the rule for ascertaining area, and from the surface of the lowest floor up to the under surface of the roof-covering of such building.

Rule for ascertaining Number of Stories.

And the stories of every building are to be counted from the foundation, upwards.

And if the space in height between the top of the footings and the level of the lowest floor do not exceed five feet,—then the story nearest the foundation is to be considered the lowest or first story; but if such space exceed five feet,—then such space is to be considered to contain the lowest or first story; and in that case nine inches above the top of the footing is to be considered the level of the lowest floor.

Rule for ascertaining Thickness of Walls.

And the thickness or width of every wall, and of the footing thereof, is to be ascertained by measuring only the thickness or width of which such walls or footings shall have been originally built.

SCHEDULE (C.)—PART II.—(see Sec. 5.)

CONDITIONS for determining the RATES to which BUILDINGS of the FIRST or DWELLING-HOUSE CLASS are to be deemed to belong, and the THICKNESS of the EXTERNAL WALLS and of the PARTY-WALLS thereof.

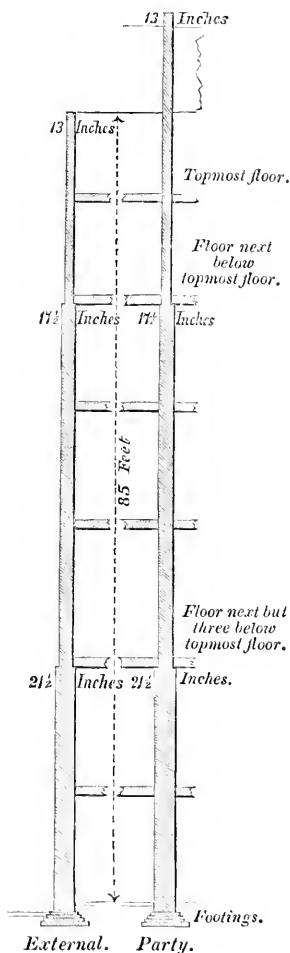
In reference to HEIGHT.	In reference to AREA.	In reference to STORIES.	RATE of BUILDING.	REQUISITE THICKNESS of EXTERNAL WALLS of each Rate of the FIRST CLASS.	REQUISITE THICKNESS of PARTY-WALLS of each Rate of the FIRST CLASS.
1. If the building be in height more than 70 feet, and not more than 85 feet,	-- If the building cover more than 10 squares, and not more than 14 squares,	-- If the building contain SEVEN stories,	-- It is to be of the FIRST RATE of this class,	-- And the thickness of the external walls must be, at the least, $21\frac{1}{2}$ inches from the top of the footing up to the under-side of the floor next but three below the topmost floor; and, at the least, $17\frac{1}{2}$ inches from the under-side of the floor next but three below the topmost floor up to the under-side of the floor next below the topmost floor; and, at the least, 13 inches from the under-side of the floor next below the topmost floor up to the top of the wall.	-- And the thickness of the party-walls must be, at the least, $21\frac{1}{2}$ inches from the top of the footing up to the under-side of the floor next but three below the topmost floor; and, at the least, $17\frac{1}{2}$ inches from the under-side of the floor next but three below the topmost floor up to the under-side of the floor next below the topmost floor; and, at the least, 13 inches from the under-side of the floor next below the topmost floor up to the top of the wall.
But if it be in height more than 85 feet,	-- Or if it cover more than 14 squares,	-- Or if it contain more than SEVEN stories,	-- It is to be an EXTRA FIRST RATE of this class.	-- And the thickness of the external walls must be, at the least, $21\frac{1}{2}$ inches from the top of the footing up to the under-side of the floor next but two below the topmost floor; and, at the least, $17\frac{1}{2}$ inches from the under-side of the floor next but two below the topmost floor up to the top of the wall.	-- And the thickness of the party-walls must be, at the least, $21\frac{1}{2}$ inches from the top of the footing up to the under-side of the floor next but three below the topmost floor; and, at the least, $17\frac{1}{2}$ inches from the under-side of the floor next but three below the topmost floor up to the under-side of the floor next below the topmost floor; and, at the least, 13 inches from the under-side of the topmost floor up to the top of the wall.

SCHEDULE (C.)—PART. II.—(continued.)

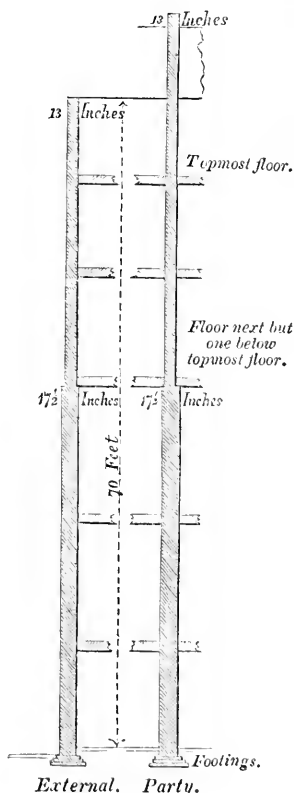
In reference to HEIGHT.	In reference to AREA.	In reference to STORIES.	RATE of BUILDING.	REQUISITE THICKNESS of EXTERNAL WALLS of each Rate of the FIRST CLASS.	REQUISITE THICKNESS of PARTY-WALLS of each Rate of the FIRST CLASS.
2. If more than 52 feet, and not more than 70 feet,	-- Or if it cover more than 6 squares and not more than 10 squares,	-- Or if it contain SIX stories,	-- It is to be the SECOND RATE of this class.	-- And the thickness of the external walls must be, at the least, 17½ inches from the top of the footing up to the under-side of the floor next but one below the topmost floor; and, at the least, 13 inches from the under-side of the floor next but one below the topmost floor up to the top of the wall.	-- And the thickness of the party-walls must be, at the least, 17½ inches from the top of the footing up to the under-side of the floor next but one below the topmost floor; and, at the least, 13 inches from the under-side of the floor next but one below the topmost floor up to the top of the wall.
3. If more than 38 feet, and not more than 52 feet,	-- Or if it cover more than 4 squares, and not more than 6 squares,	-- Or if it contain FIVE stories,	-- It is to be the THIRD RATE of this class.	-- And the thickness of the external walls must be, at the least, 17½ inches from the top of the footing up to the under-side of the floor next but two below the topmost floor; and, at the least 13 inches from the under-side of the floor next but two below the topmost floor up to the top of the wall.	-- And the thickness of the party-walls must be, at the least, 17½ inches from the top of the footing up to the under-side of the floor next but two below the topmost floor; and, at the least, 13 inches from the under-side of the floor next but two below the topmost floor up to the under-side of the topmost floor; and, at the least, 8½ inches from the under-side of the topmost floor up to the top of the wall.
4. If not more than 38 feet,	-- Or if it do not cover more than 4 squares,	-- Or if it do not contain more than FOUR stories,	-- It is to be the FOURTH RATE of this class.	-- And the thickness of the external walls must be, at the least, 13 inches from the top of the footing up to the under-side of the floor next below the topmost floor; and at the least 8½ inches from the under-side of the floor next below the topmost floor up to the top of the wall.	-- And the thickness of the party-walls, must be, at the least, 13 inches from the top of the footing up to the under side of the floor next but one below the topmost floor; and, at the least 8½ inches from the under-side of the floor next but one below the topmost floor up to the top of the wall.

TRANSVERSE SECTIONS OF WALLS OF THE FIRST, OR DWELLING-HOUSE CLASS, according to the Descriptions of their Thicknesses in SCHEDULE (C.)—PART II.

FIRST RATE.

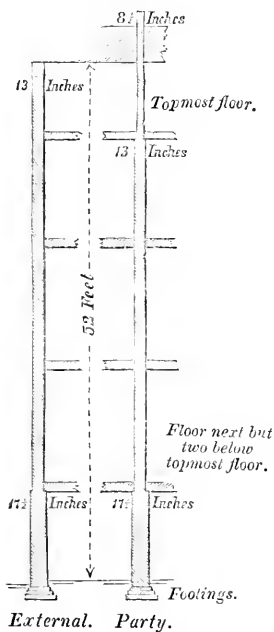


SECOND RATE.

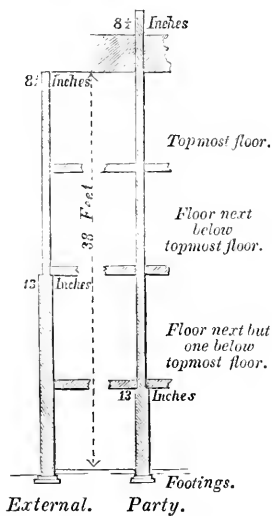


TRANSVERSE SECTIONS OF WALLS OF THE FIRST, OR DWELLING-HOUSE CLASS, according to the Descriptions of their Thicknesses in SCHEDULE (C.)—PART II.

THIRD RATE.

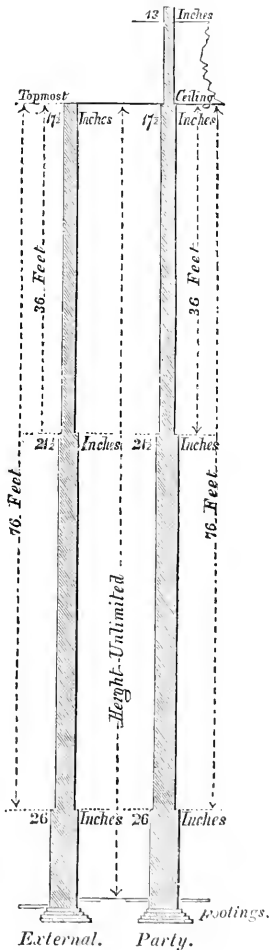


FOURTH RATE.

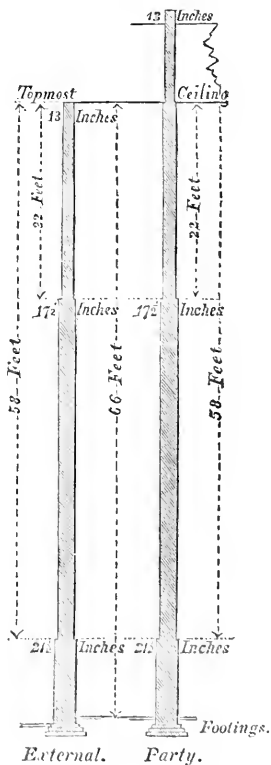


TRANSVERSE SECTIONS OF WALLS OF THE SECOND, OR WAREHOUSE CLASS, according to the Description of their Thicknesses in SCHEDULE (C.)—PART III.

FIRST RATE.

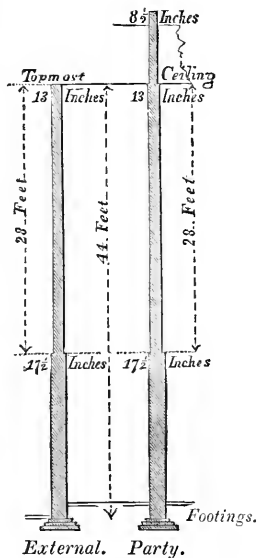


SECOND RATE.

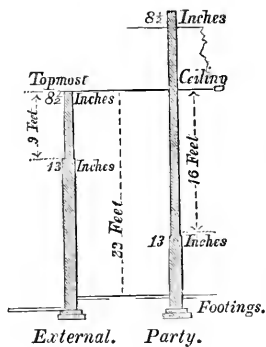


TRANSVERSE SECTIONS OF WALLS OF THE SECOND, OR WAREHOUSE CLASS, according to the Descriptions of their Thicknesses in SCHEDULE (C.)—PART III.

THIRD RATE.



FOURTH RATE.



SCHEDULE (C.)—PART III.—(see Sec. 5.)

CONDITIONS for determining the RATES to which BUILDINGS of the SECOND or WAREHOUSE CLASS are to be deemed to belong, and the THICKNESS of the EXTERNAL WALLS and of the PARTY-WALLS thereof.

In reference to HEIGHT.	RATE of BUILDING.	REQUISITE THICKNESS of the EXTERNAL WALLS of each Rate of the SECOND CLASS.	REQUISITE THICKNESS of the PARTY-WALL of each Rate of the SECOND CLASS.
1. If the building be in height more than 66 feet,	- - It is to be of the FIRST RATE of this Class,	- - And the thickness of the external walls must be, at the least, 26 inches from the top of the footing up to the level of 76 feet below the topmost ceiling; and, at the least, 21½ inches from the level of 76 feet below the topmost ceiling up to the level of 36 feet below the topmost ceiling; and, at the least, 17½ inches from the level of 36 feet below the topmost ceiling up to the level of the topmost ceiling.	- - And the thickness of the party-walls must be, at the least, 26 inches from the top of the footing to the level of 76 feet below the topmost ceiling; and, at the least, 21½ inches from the level of 76 feet below the topmost ceiling up to the level of 36 feet below the topmost ceiling; and, at the least, 17½ inches from the level of 36 feet below the topmost ceiling up to the level of the topmost ceiling.
2. If more than 44 feet, and not more than 66 feet,	- - It is to be the SECOND RATE of this Class,	- - And the thickness of the external walls must be, at the least, 21½ inches from the top of the footing up to the level of 58 feet below the topmost ceiling; and, at the least, 17½ inches from the level of 58 feet below the topmost ceiling up to the level of 22 feet below the topmost ceiling; and, at the least, 13 inches from the level of 22 feet below the topmost ceiling up to the top of the wall.	- - And the thickness of the party-walls must be, at the least, 21½ inches from the top of the footing up to the level of 58 feet below the topmost ceiling; and, at the least, 17½ inches from the level of 58 feet below the topmost ceiling up to the level of 22 feet below the topmost ceiling; and, at the least, 13 inches from the level of 22 feet below the topmost ceiling up to the top of the wall.

SCHEDULE (C).—PART III.—(continued.)

In reference to HEIGHT.	RATE of BUILDING.	REQUISITE THICKNESS of the EXTERNAL WALLS of each RATE of the SECOND CLASS.	REQUISITE THICKNESS of the PARTY-WALL of each RATE of the SECOND CLASS.
3. If more than 22 feet, and not more than 44 feet,	- - It is to be of the THIRD RATE of this Class,	- - And the thickness of the external walls must be, at the least, $17\frac{1}{2}$ inches from the top of the footing up to the level of 28 feet below the topmost ceiling; and, at the least, 13 inches from the level of 28 feet below the topmost ceiling up to the top of the wall.	- - And the thickness of the party-walls must be, at the least, $17\frac{1}{2}$ inches from the top of the footing up to the level of 28 feet below the topmost ceiling; and, at the least, 13 inches from the level of 28 feet below the topmost ceiling up to the level of the topmost ceiling; and, at the least, $8\frac{1}{2}$ inches from the level of the topmost ceiling up to the top of the wall.
4. If not more than 22 feet,	- - It is to be of the FOURTH RATE of this Class,	- - And the thickness of the external walls must be, at the least, 13 inches from the top of the footing up to the level of 9 feet below the topmost ceiling; and, at the least, $8\frac{1}{2}$ inches from the level of 9 feet below the topmost ceiling up to the top of the wall.	- - And the thickness of the party-walls must be, at the least, 13 inches from the top of the footing up to the level of 16 feet below the topmost ceiling; and, at the least, $8\frac{1}{2}$ inches from the level of 16 feet below the topmost ceiling up to the top of the wall.

SCHEDULE (C.)—PART IV.

RULES concerning BUILDINGS of the SECOND or WAREHOUSE CLASS.

Warehouses, &c.

With regard to any building of the second class, hereafter built or rebuilt, in reference to the capacity or contents thereof within the same enclosing-walls,—

If such building contain more than 200,000 cubic feet, then such building must be divided by party-walls, so as that there be not in any one part of such building more than 200,000 cubic feet without party-walls.

Openings in Party-walls.

And with regard to buildings of the second class, in reference to openings through party-walls,—

Such openings must not be made wider than six feet, nor higher than eight feet, unless in each case, and upon special evidence of necessity for convenience or otherwise, the official referees shall previously authorize larger openings.

And the floor, and the jambs, and the head of every such opening must be composed of brick or stone or iron work throughout the whole thickness of the wall.

And every such opening must have a strong wrought-iron door on each side of the party-wall, fitted and hung to such opening without wood work of any kind; and such doors must be not less than one-fourth of an inch thick in the panels thereof;

And each of such doors must be distant from the other not less than the full thickness of the party-wall.

Roofs.

And with regard to the roofs of buildings of the second class,—

In order to prevent the formation of curbed roofs to such buildings, the plane of the surface of the roof of every such building must not incline from the external or party-walls upwards, at a greater angle than forty degrees with the horizon.

SCHEDULE (C.)—PART V.

REQUISITES for determining the Rate to which any Building of the THIRD or PUBLIC BUILDING CLASS is to be deemed to belong.

If any building of the third or public-building class correspond in

SCHEDULE (C.)—PART V.—*continued.**Schedules.*
—

form or structure or disposition with a dwelling-house,—then the rate thereof is to be determined by the same rules as the rates of the first or dwelling-house class; and the thicknesses of the external and party-walls, and the width of the footings thereof, are to be at the least four inches more than is hereby required for the external and party-walls, and the footings thereof, of buildings of the same rate of the first or dwelling-house class, unless the official referees, on special supervision in each case, shall otherwise appoint.

But if it correspond in form or structure or disposition with a warehouse, or any building of the second class,—then the rate thereof is to be determined by the same rules as the rates of the second or warehouse class; and the thickness of the external and party-walls, and the width of the footings thereof, are to be at the least four inches more than is hereby required for the external and party-walls, and the footings thereof, of buildings of the same rate of the second or warehouse class, unless the official referees, on special supervision in each case, shall otherwise appoint.

But if it do not correspond in form and structure, or in either, with buildings of the first or second classes, or any of them, then such building is to be subject, as to its walls or other construction, to the special approval of the official referees.

SCHEDULE (C.)—PART VI.

RULE CONCERNING FIRE-PROOF ACCESSES and STAIRS to
BUILDINGS of the FIRST and THIRD CLASSES.

With regard to buildings of the first class, whereof the internal stairs are of stone or other incombustible substance,—such stairs must be set in, or be fixed to, and be wholly upborne by, fire-proof constructions, and must be connected internally by landings, the floors of which are fire-proof, and wholly upborne and supported by fire-proof constructions; and must be connected with the exterior entrance by passages, the floors of which are fire-proof, and wholly upborne and supported by fire-proof constructions.

And with regard to buildings of the third class,—the floors of the halls, vestibules, lobbies, corridors, passages, and the stairs and landings, and all other ways of ingress and egress within the building, to and from all rooms or apartments used for public congregation, and to and from all galleries being part of,

Schedules.

or being connected with, any such room or apartment, must be wholly supported, constructed, formed, made and finished fire-proof.

SCHEDULE (C.)—PART VII.

RULES concerning attached and detached and insulated BUILDINGS, as to the RATES and WALLS thereof.

Attached Buildings and Offices.

With regard to buildings or offices now built or hereafter to be built (except greenhouses, vineries, aviaries, or such like buildings),—and that, whether such buildings or offices be attached to, or detached from, the buildings to which they belong,—

Every such building is to be deemed, in respect of the walls thereof, and all other requisites, as a building of the rate to which it would belong if it had been built separately.

Insulated Buildings.

And with regard to buildings of the first or dwelling-house class, and of the second or warehouse class, which shall be insulated, so far as relates to the distance thereof from a public street or way,—

Every such building must be distant from any public street or alley one-third of the height thereof at the least; and if the building do not exceed 24 feet in height,—then it must be so distant at the least eight feet.

And with regard to such building, so far as relates to the distance thereof from any other building, or from ground not in the same possession or occupation therewith, or connected therewith only by a fence or fence-wall,—it must be distant from such other building or such other ground at the least 30 feet.

And if such building be so distant from a public street or alley, and from any other building, or from ground not in the same possession or occupation therewith,—then such building is not to be liable, in respect of the dimensions and materials thereof, to the rules and directions of this Act.

Insulated Buildings afterwards divided.

Provided always, that if any such building be hereafter divided into two or more distinct buildings, and the several parts of such buildings so divided be not at the aforesaid distance from each other, and from other buildings and ground,—then such

SCHEDULE (C.)—PART VII.—*continued.**Schedules.*
—

several parts must be separated from each other by such party-walls, as are herein prescribed for the rates to which such several parts, if adjoining, would belong.

And if such requisites be not observed,—then such several parts of such buildings in respect of which they are not so observed, shall be deemed a public nuisance, and as such be taken down, according to the provisions of this Act in that behalf.

Toll-houses, &c.

And with regard to certain buildings which shall be built for the purposes of trade or the collection of toll,—

If such buildings be situate fifteen feet at the least from any other building, and do not cover an area of more than one square and one half, and the height thereof do not exceed twelve feet from the ground to the highest point of the roof,—then every such building may be enclosed with any materials whatsoever; but the roof thereof must be covered as herein directed with regard to roofs, and the chimney and flue (if any) must be built as herein directed with regard to chimneys and flues.

SCHEDULE (D.)

PART I.—RULES concerning WALLS of whatever Kind.

Foundations.

With regard to the Foundations of Walls:—

Every external wall and every party-wall, and every party-fence-wall, must be built upon a constructed footing, based upon solid ground, or upon other sufficient foundation.

Footings.

With regard to footings of walls, in reference to the materials thereof, to the width thereof, to the height thereof above the foundation, and to the depth below the surface,—

Materials.

1. In reference to the materials thereof:—

Every footing must be built either of sound bricks, or of stone, or of such bricks and stone together, laid in and with mortar or cement in such manner as to produce solid work.

Width.

3. In reference to the width thereof:—

The bottom of the footing of every external wall and party-wall of the first rate must be at the least $17\frac{1}{2}$ inches wider than the wall standing thereon; and the bottom of every footing of every external wall and party-wall of the second and third rates must be at the least 13 inches wider than the wall standing thereon; and the bottom of the footing of every external wall and party-wall of the fourth rate and of every party-fence-wall, must be at the least $8\frac{1}{2}$ inches wider than the wall standing thereon.

The top of the footing of every party-fence-wall and of every external wall and party-wall must be, at the least, four inches wider than the wall standing thereon.

Height.

4. In reference to the height above the foundation:—

The footing of every external wall and party-wall of the first rate must be at the least eleven inches high above the foundation.

The footing of every external wall and party-wall of the second and third rates must be at the least eight inches high above the foundation.

The footing of every party-fence-wall and of every external wall and party-wall of the fourth rate, must be at the least five inches high above the foundation.

Depth below Ground.

5. In reference to the depth thereof below the surface of the lowest ground or area adjoining:—

The top of the footing of every party-fence-wall and of every external wall and party-wall must be at the least three inches below such surface.

Depth below lowest Floor.

6. In reference to the depth thereof below the surface of the lowest floor adjoining, or intended to adjoin, thereto:—

The top of the footing of every external wall and party-wall must be at the least nine inches below such surface; and in any building of the first class the surface of the earth, or of any paving on the outside, (except the pavement of any public way,) must not at any time be raised to within six inches of the surface of the lowest or first floor of such building.

SCHEDULE (D.)—*continued.**Schedules.**Thicknesses of Enclosing Walls to Stories of Buildings of whatever Rate.*

With regard to the enclosing walls to stories of buildings of the first and second classes,—

Each of the enclosing walls of any such story, throughout the whole height thereof, from the top of the footing up to the top of such story, and with all the sets-off in addition required for such wall, to whatever rate or whichever class it may belong, and throughout at the least one-third of the whole length of such wall, in piers properly distributed, must be of the following dimensions, (unless cross or return-walls, coursed and bonded with the enclosing walls, shall, in the opinion of the official referees, upon special application to them in each particular case, give sufficient strength, with less thickness in such enclosing walls); that is to say,—

As to first class buildings; if the story be in height more than 11 feet,—then the thickness of its enclosing walls must be at the least 13 inches.

Or if the story be in height more than 15 feet,—then the thickness of its enclosing walls must be at the least $17\frac{1}{2}$ inches.

As to second class buildings; if the story be in height more than 9 feet,—then the thickness of its enclosing walls must be at the least 13 inches.

Or if the story be in height more than 12 feet, then the thickness of its enclosing walls must be at the least $17\frac{1}{2}$ inches.

Or if the story be in height more than 15 feet,—then the thickness of its enclosing walls must be at the least $21\frac{1}{2}$ inches.

Or if the story be in height more than 18 feet,—then the thickness of its enclosing walls must be at the least 26 inches.

Nevertheless as to any external wall of any building of the first class in which there are no apertures or recesses. If there be another external wall and a cross wall of not less than $8\frac{1}{2}$ inches thick, coursing and bonding with such external wall, or if two such cross walls occur within a length of 24 feet of such wall, then such external wall may be built of the thickness of 13 inches, of any height not exceeding 18 feet, within any story, although the rate of the wall may require a greater thickness; but always upon condition that the substructure of such wall is 4 inches thicker at the least than such superstructure, and vertically under it.

And also if any such wall be abutted by cross or return walls within a length of 12 feet, and if not more than one aperture

*Schedules.*SCHEDULE (D.)—PART I.—*continued.*

or recess occur within such length of 12 feet, and not more than one-half the quantity in length be taken out of such compartment of a wall by any such aperture or recess, then such external wall may be built of any thickness not less than 13 inches, notwithstanding the rate of such wall may require a greater thickness.

SCHEDULE (D.)

PART II.—EXTERNAL WALLS.

Construction and Materials.

And with regard to the component materials of external walls to buildings of whatever class,—

Every such wall must be built of sound bricks or of stone, or of such bricks and stone together, laid in and with mortar or cement in such manner as to produce solid work; and every such wall must be carried up of its full thickness to the underside of the plate under the roof.

Nevertheless, in such walls, besides all requisite openings for doors and windows, recesses may be formed; so that the back thereof be of the thickness of eight inches and a half at the least; and so that the stability and sufficiency of the wall be not injuriously affected by making such recesses.

And with regard to other substances than the component materials of external walls,—

There may be such wood and iron as shall be necessary.

And every plate, lintel, bond, corbel, being of wood, and every wood-brick laid into any external wall, and all ends of joists, of girders, and of the heads and sills of partitions running into any external wall, must be fixed at a distance from the external face of the wall of four inches at the least.

And the frames of doors and windows must be fixed in reveals at a distance from the external face of the wall of four inches at the least.

And shop-fronts must be fixed in such manner as is herein specially directed.

And the tiers of door-cases to warehouses must be fixed in the openings left in such walls, at a distance from the external face of the wall of two inches at the least.

But no timber must be laid into any external wall in such manner, or of such length, as to render the part of the wall above it wholly, or in great part, dependent upon the wood for support,

SCHEDULE (D.)—PART II.—*continued.**Schedules.*
—

or so that any such wood might not be withdrawn without endangering the safety of the superincumbent structure, except in the case of brestsummers.

Height and Thickness of Parapets.

And with regard to external walls, in reference to the height and thickness of any parapet thereon,—

If an external wall adjoin a gutter,—then such external wall must be carried up, and remain one foot at the least above the highest part of such gutter.

And the thickness of an external wall, so carried up above the level of the underside of the gutter-plate, and forming a parapet, must be at the least,—

In every such wall of the extra first rate of the first class, and in every such wall of the first rate of the second class, 13 inches thick; and—

In every other external wall of whatever rate or whichever class, $8\frac{1}{2}$ inches thick.

Brestsummers.

With regard to every brestsummer fixed to carry any front wall of a building,—

If such brestsummer have a bearing at one end upon a party-wall,—then it must be laid upon a template or corbel of stone or iron, which template or corbel must be tailed through such wall at least two-thirds of the thickness thereof; and the end of such brestsummer must not be fixed into, and must not have its bearing solely upon such party-wall, but must be supported by a sufficient pier built of brick or stone, or by an iron column, or iron or timber story-post fixed on a solid foundation.

And if any such brestsummer have its bearing at each end upon a party-wall,—then it must be supported by at least two sufficient piers built of brick or stone, or by iron columns or by iron or timber story-posts fixed on solid foundations, and standing within and clear of the party-walls.

Or any such brestsummer may bear upon constructed returns in the direction of the length of the brestsummer of four inches at the least, coursed and bonded with the substance of the party-wall or party-walls; and such constructed returns must be increased one inch, at the least, for every six feet in length that the brestsummer may be otherwise unsupported.

And if the height of the under-side of any brestsummer, laid from party-wall to party-wall to carry any external wall, exceed 15 feet from the surface of the public foot-pavement in front of the building,—then there must be constructed returns in the direction of the length of the brestsummer from the

*Schedules.*SCHEDULE (D.)—PART II.—*continued.*

inside of each party-wall of $8\frac{1}{2}$ inches at the least, and at the least of the full thickness of such brestsummer; and every such return must be increased one inch at the least for every foot or part of a foot the brestsummer may be in height from the surface of the public foot-pavement more than 16 feet, whether the brestsummer be otherwise supported or not.

Materials to be used in Repairs.

And with regard to old external walls or other external inclosures of any building already built, in reference to materials to be used in the repair thereof,—

If any such wall or inclosure be not built of the materials required by this Act for external walls or other external inclosures hereafter to be built,—then every part of such wall or other external inclosure, (except the inclosure of roofs, and the flats, gutters, dormers, turrets, lantern-lights and other erections thereon,) may be at all times thereafter repaired with materials of the same sort as those of which such external wall or inclosure has been already built.

Materials to be used in Rebuilding.

But if any such external wall or inclosure be at any time hereafter taken down or otherwise demolished for the height of one story, or for a space equal to one-fourth of the whole surface of such external wall,—then every part thereof, not built in the manner and of the several materials by this Act directed for external walls, must be taken down; and the same must be rebuilt in such manner, and of such materials, and in all respects as by this Act directed for external walls hereafter to be built, according to the class and rate of the building to which such external wall or inclosure shall belong.

External Wall used as a Party-wall.

And with regard to external walls to be used as party-walls to any building adjoining thereto, (except an attached building or office as is hereinbefore described),—

If the external wall of any building have not such footings, or be not of such heights and thicknesses, or be not built in such manner and of such materials as are herein directed for party-walls of buildings of the highest rate to which such wall shall adjoin,—then such external wall must not be used as a party-wall for any such building; but there must be a distinct external wall built as herein described for external walls, of the rate to which it shall belong.

But if such external wall to any building already built be at the

SCHEDULE (D.)—PART II.—*continued.**Schedules.*
—

least 13 inches in thickness, in every part, and be of sound and proper materials and in good condition,—then such wall may be used as a party wall; but if the house of which such wall forms a part be rebuilt within five years from the time at which the wall shall have been so first used as a party-wall,—then such wall must become subject to the provisions of this Act in respect of party-walls, according to the class and rate to which the said wall did first belong.

SCHEDULE (D.)

PART III.—PARTY-WALLS.

Division of Buildings.

And with regard to walls used to divide single buildings into two or more,—

If it be intended to divide any building into two or more distinct parts,—then every wall for that purpose must be built as a party-wall, in the manner and of the materials, and of the several heights and thicknesses for party-walls of the highest rate of building to which such party-wall shall belong or adjoin, as prescribed in reference to the thicknesses of party-walls in Schedule (C.)

And if any building already built or which shall be hereafter built, be converted, used or occupied as two or more separate buildings, each having a separate entrance and staircase, then every such building shall be deemed to be two or more separate houses, and such separate houses must be divided from each other by a party-wall or party arch or arches, built in the manner and of the materials required for party-walls, or for party-arches, for the class and rate to which the largest of the buildings so divided shall belong.

Site of Walls.

With regard to party-walls, in reference to the site thereof,—

If the buildings be of equal rate,—then such party-wall must be built on the line of junction of such buildings, one-half on the ground of the owner of one of such buildings, and one-half on the ground of the owner of the other of such buildings.

If such buildings be of different rates,—then such wall must be built on the line of junction thereof, as follows; that is to say, one-half of the thickness of the wall required for the building of the

*Schedules.*SCHEDULE (D.)—PART III.—*continued.*

—

lower rate, on the ground of each of the adjoining owners ; and the whole of the additional thickness of the wall required for the building of the higher rate, on the ground of the owner of such building of the higher rate.

And if such building of the lower rate be thereafter enlarged or altered, so as to become a building of a higher rate,—then the owner of such first-mentioned building of the higher rate, for the time being, shall be entitled to receive from the owner of such building of the lower rate, such sum of money as shall be a sufficient compensation for the ground occupied by that portion of the party-wall, which, according to the rate of the building enlarged, ought to have been built by its owner on his own ground, as well as the value of so much of the wall itself as may be more than the owner of such building of the lower rate had already paid for.

Construction and Materials.

And with regard to party-walls, in reference to the component materials thereof,—

Every part of such party-wall must be built of sound bricks or of stone, or of such bricks and stone together, laid in and with mortar or cement, in such manner as to produce solid work.

And as to the wood work which it may be desired to connect with the party-walls of any building,—The bearing ends of wooden beams, brestsummers, girders, trimming joists, and the ends of partition-heads and sills, and the bearing ends of the main timbers of a roof, and wood-bricks, may be laid into the substance of a party-wall ; but no such beam, brestsummer, girder, joist, partition-head or sill, nor any part of a roof being wood, nor any wood-bricks, must be laid or placed within four inches of the centre of any party-wall ;—and no other wood-work of any kind must be laid into, placed upon, or be run or driven into any part of the substance of any party-wall.

But if the ends of timbers be carried on iron shoes or stone corbels, then such iron shoes or stone corbels must be built into the wall at the least one-half of the thickness of such wall.

And the top of every such party-wall must be finished with one course of sound stock-bricks, set on edge with good cement, or by a coping of any other properly secured and sufficient water-proof and fireproof covering.

Height of Party-walls above Roof.

And with regard to party-walls, in reference to the height thereof,—

If a party-wall adjoin to any roof,—then such party-wall must be carried up and remain one foot six inches at the least above the

SCHEDULE (D.)—PART III.—*continued.**Schedules.*
—

part where the party-wall and roof adjoin, measured at a right angle with the back of the rafters of such roof.

And if any party-wall in any building of the first class adjoin a gutter,—then such party-wall must be carried up, and remain two feet at the least above the highest part of any such gutter.

And if any party-wall in any building of the second class adjoin a gutter,—then such party-wall must be carried up, and remain three feet at the least above the highest part of any such gutter.

If there be fixed within five feet of a party-wall, upon the flat or roof of the building, any turret, dormer, lantern-light or other erection, of combustible materials,—then every such party-wall must be carried up next to every such turret, dormer, lantern-light or other erection, and must extend one foot six inches higher, and one foot six inches wider than any such erection on each side thereof.

Openings in Party-walls.

And for the purpose of regulating the making of openings through any party-wall between one dwelling-house and another, whereby two or more dwelling-houses shall be united.

With regard to any dwelling-houses of any rate, such dwelling-houses may be united by means of openings in the party-walls.

But with regard to any such dwelling-houses which when so united will contain more than fourteen squares,—

If such dwelling-houses shall be and continue to be in the same occupation, then, upon its being declared by the official referees that in their opinion the stability and security from fire of any or either of such dwelling-houses will not be endangered by making such openings, they may be made accordingly.

Recesses and Chases.

And further, with regard to any party-wall, as to recesses, and as to chases in such wall,—

In every story recesses may be formed, but only with the consent and authority of the official referees first had and obtained, and so that such recesses be arched over, and so that the back of any such recess be not nearer than seven inches to the centre of the party-wall in the first or lowest story, nor nearer than four inches to the centre of the party-wall in any other story, and so that the stability and sufficiency of such party-wall be not injuriously affected thereby.

If any chases be required for the insertion of ends of walls, of piers, of chimney-jambs, of withes of flues, of metal pipes, or of iron story-posts,—then every chase for any such purpose must not be left or be cut nearer than four inches at the least to the centre of a party-wall, nor within a distance of nine inches at the least from any front or back wall, and no two

SCHEDULE (D.)—PART III.—*continued.*

such chases must be made within a distance of seven feet six inches at the least from each other on the same side of a wall, and no such chase must be formed wider than nine inches.

SCHEDULE (D.)

PART IV.—PARTY-WALLS, AND PARTY-ARCHES BETWEEN INTERMIXED PROPERTY.

And with regard to any building already built, having rooms or floors, the property of different owners, which lie intermixed, without being separated by any party-wall or party-arch or stone floor,—

If any such building be altogether rebuilt, or to the extent of one-fourth of the cubical contents thereof,—then such intermixed properties must be separated from each other as follows :

If they adjoin vertically,—then so far as they adjoin vertically, they must be separated by a party-wall.

If they adjoin horizontally,—then so far as they adjoin horizontally, they must be separated either by a floor formed of brick, tile, stone or other proper and sufficient incombustible materials, subject to the consent of the official referees, or by a floor formed of iron-girders and brick-arches or stone-landings, or tiles, or by a party-arch or party-arches of brick or stone of the thickness of nine inches at the least, if the span do not exceed nine feet, and thirteen inches at the least if the span exceed nine feet ; and such floor or party-arch or party-arches must be built with sufficient abutments and in a sufficient manner.

SCHEDULE (D.)

PART V.—BUILDINGS OVER PUBLIC WAYS.

And with regard to buildings extending over any public way, as to the part thereof which extends over such way, so far as relates to the separation of such part from such public way,—

If such part be rebuilt, then it must be separated from such public way, either by a floor or arch formed of brick or stone, or of other incombustible materials, subject to the consent of the official referees, or by a floor formed of iron-girders and brick-arches or stone-landings, or by an arch formed of brick or of stone ; which arch, if the span thereof do not exceed nine feet, must be of the thickness of nine inches at the least, and

SCHEDULE (D.)—PART V.—*continued.**Schedules.*

which, if the span exceed nine feet, must be of the thickness of thirteen inches at the least.

And such floor or arch, with its abutments, must be built in such manner as shall be approved of by the surveyor; but there must not be formed over any public way a ceiling of lath and plaster, or of lath and cement.

SCHEDULE (E.) — (*see* Sec. 5.)

RULES CONCERNING external PROJECTIONS.

Porticoes projected over Public Ways.

And with regard to the portico or porticoes of any church, chapel, theatre or other public building of the third class,—

If the building of the same shall have been previously sanctioned by the official referees, by writing under their hands, and if objection be not made by any party interested within one month thereafter, and if, upon such objection or appeal, her Majesty's principal secretary of state acting for the home department, do not decide in favour thereof,—then such projections may be built over the foot pavement of any street or alley which shall be fifty feet wide at the least (notwithstanding any act heretofore passed to the contrary.)

Projections from Face-walls, &c.

And further, with regard to buildings hereafter to be built or rebuilt, in reference to projections therefrom,—

As to copings, parapets, cornices to overhanging roofs, blocking-courses, cornices, piers, columns, pilasters, entablatures, facias, door and window dressings, or other architectural decorations, forming part of an external wall,—all such may project beyond the general line of fronts in any street or alley, but they must be built of the same materials as are by this Act directed to be used for building the external walls to which such projections belong, or of such other proper and sufficient materials as the official referees may approve and permit.

And as to all balconies, verandahs, porches, porticoes, shop-fronts, open inclosures of open areas, and steps, and water-pipes, and to all other projections from external walls not forming part thereof,—every such projection (except such part of shop-fronts, and the frames and sashes of the windows and doors, in reference to the necessary wood-work thereof), may stand beyond the general line of fronts in any street or alley, but they must be built of brick, tile, stone, artificial stone, slate, cement or metal, or other proper and sufficient fire-proof materials; and they must be so built as not to

*Schedules.*SCHEDULE (E.)—*continued.*

overhang the ground belonging to any other owner, and so as to obstruct the light and air, or be otherwise injurious to the owners or occupiers of the buildings adjoining thereto, on any side thereof.

Projections from Walls of Buildings over Public Ways.

And with regard to all buildings hereafter to be built or rebuilt, in reference to projections from the walls of such buildings, including steps, cellar doors and area inclosures,—The walls of all such buildings must be set back, so that all projections therefrom, and also all steps, cellar doors and area inclosures, shall only overhang or occupy the ground of the owner of such building, without overhanging or encroaching upon any public way.

Projected Buildings beyond the general Line of Buildings and from other external Walls.

And with regard to buildings already built or hereafter to be rebuilt, as to bow windows or other projections of any kind,—Such projections must neither be built with, nor be added to any building on any face of an external wall thereof, so as to extend beyond the general line of the fronts of the houses (which general line may be determined by the surveyor), except so far as is hereinbefore provided with regard to porticoes projected over public ways, and with regard to projections from face-walls and shop-fronts; nor so as to overhang the ground belonging to any other owner; nor so as to obstruct the light and air, or be otherwise injurious to the owners or occupiers of the buildings adjoining thereto, on any side thereof.

Projections from insulated Buildings.

Provided always, with regard to any insulated buildings, that if the projections be at the least 8 feet from any public way, and if they be at least 20 feet from any other building not in the same occupation,—then such projections are excepted from the rules and directions of this Act.

Wooden Shop Fronts and Shutters.

And with regard to shop-fronts and their entablatures, their shutters and pilasters and stallboards, made of wood,—

If the street or alley in which such front is situate be of less width than 30 feet,—then no part of such shop-front must be higher, in any part thereof, than 15 feet; nor must any part, except the cornice, project from the face of a wall, whether there be an area or not, more than five inches;

SCHEDULE (E.)—*continued.**Schedules.*

nor must the cornice project therefrom more than 13 inches.

If the street or alley be of a greater width than 30 feet,—then no part of such shop-front, except the cornice, must project from the face of a wall, whether there be an area or not, more than 10 inches; nor must the cornice project therefrom more than 18 inches.

And the width of such street or alley must be ascertained by measuring the same, as hereinafter directed with regard to the widths of streets and alleys.

And the wood-work of any shop-front must not be fixed nearer than $4\frac{1}{2}$ inches to the centre line of a party-wall.

And with regard to such wood-work, if it be put up at such distance of $4\frac{1}{2}$ inches, then a pier or corbel built of stone or of brick or other incombustible material, and of the width of $4\frac{1}{2}$ inches at the least, must be fixed in the line of the party-wall, so as to be as high as such wood-work, and so as to project one inch at the least in front of the face thereof.

And the height of every shop-front must be ascertained by measuring from the level of the public foot-pavement in front of the building.

And every sign or notice-board fixed against or upon any part of any house, or other building standing close to any public way, must be so fixed that the top shall be within 18 feet at the most above the level of such public way.

SCHEDULE (F.)—(see Sec. 5.)

RULES concerning CHIMNEYS hereafter built or rebuilt.

Construction.

With regard to chimneys and chimney stacks, except angle chimneys, in reference to the construction thereof,—

The foundations and footings of every such chimney and chimney stack must be built similar to those of the wall in or adjoining to which it shall be.

And every such chimney and chimney stack must be built from the foundation to the top thereof without any corbelling over, whereby any upper part of the brick-work of such chimney or chimney stack shall overhang any lower part of the brick-work on the front thereof.

Nevertheless, with regard to buildings of the first rate and extra first rate,—the jambs, breast and flue of any single chimney may be built upon brick, stone, or iron corbels, above the ceiling of the third story of every such building.

And with regard to buildings of the second and third rates,—the jambs, breast and flue in any single chimney may be

*Schedules.*SCHEDULE (F.)—*continued.*

built upon brick, stone or iron corbels, above the ceiling of the second story of every such building.

But the projection both of such jambs and breast, must not in any case exceed nine inches before the face of the wall or stack to which the same shall adjoin.

And with regard to angle chimneys, such chimneys may be built in the internal angle of any building, so that the width of the breast thereof do not exceed five feet; and so that it be properly supported on iron-girders, with brick-arches, or on strong stone-landings, not less than four inches thick, and tailed at least nine inches into each of the two walls forming such angle.

Dimensions and Materials.

And with regard to chimneys, in reference to the dimensions of the jambs thereof,—

The jambs of every chimney must not be less than $8\frac{1}{2}$ inches wide on each side of such opening.

And with regard to chimneys and flues, in reference to the thickness of the brick-work thereof,—

The breast of every chimney, and the front, back, withe or partition, of every flue, must be at the least 4 inches in thickness of sound bricks, properly bonded, and the joints of the work must be filled in with good mortar or cement, and all the inside thereof, and also the outside or face thereof, next the interior of any building must be rendered or pargetted.

And with regard to flues, in reference to the dimensions thereof—no flue may be used for a smoke flue which is of less internal diameter in any section than $8\frac{1}{2}$ inches.

Timber or Wood-work.

And with regard to chimneys, in reference to timber,—

No timber must be placed over any opening for supporting the breast of any chimney; but there must be an arch of brick or stone over the opening of every such chimney, to support the breasts thereof; and an iron bar or bars must be built into the jambs, at the least nine inches on each side, to tie in the abutments whenever the breast projects more than $4\frac{1}{2}$ inches from the face of the wall, and the jamb on either side is of less width than two-thirds of the opening.

And no timber or wood-work must be placed or laid in any wall under any chimney opening within 18 inches at the least of the surface of the hearth to the fire-place of such chimney opening.

And as to any timber or wood-work, in reference to the fixing thereof in or against any wall containing flues or against any chimney-breast or chimney-jamb,—

If timber or wood work be affixed to the front of any jamb or mantel, or to the front or back of any chimney or flue,—then

SCHEDULE (F.)—*continued.**Schedules.*
—

it must be fixed by iron nails or holdfasts, or other iron fastenings, which must not be or be driven nearer than four inches to the inside of any flue or to the opening of any chimney, and such timber or wood-work must not be nearer than nine inches to the opening of any chimney.

And no timber must be laid or placed within three inches of the face or breast, back, side or jamb of any flue, or of any chimney-opening where the substance of brick-work or stone-work shall be less than $8\frac{1}{2}$ inches thick, nor must any flooring-board, batten, ground skirting, or other lining or fitting of wood, nor any wood staircase, nor any thing else of wood, be fixed or placed against, or near to the face or breast, back, side or jamb, of any flue, fire-place, or chimney opening, unless and until the brick or stone-work constituting the same shall have been thoroughly and efficiently rendered or pargetted with proper mortar or stucco, and such rendering must be in every case in addition to four inches at least of solid fire-proof structure.

Slabs and Hearths.

And a slab or slabs of brick, tile, stone, slate, marble or other proper and sufficient substance, at the least 12 inches longer than the opening of every chimney when finished, and at the least 18 inches in front of the arch over the same, must be laid before the opening of every chimney.

And in every floor, except the lowest floor, such slab or slabs must be laid wholly upon stone or iron bearers, or upon brick trimmers, but in the lowest floor, they may be laid on a brick fender, or bedded on the solid ground.

And the hearth of every chimney must be laid and bedded wholly on brick or stone, or other incombustible substance, which must be solid for a thickness of nine inches at the least, beneath the surface of any such hearth.

Backs.

And as to the back of every chimney-opening of every building (except backs of chimneys in the lowest story of buildings of the fourth rate),—every such back, in the lowest story, must be at the least 13 inches thick from the hearth to the height of 12 inches above the mantel, and in every other story, at the least $8\frac{1}{2}$ inches thick up to the same relative height.

And as to the backs of chimney-openings in the lowest story of buildings of the fourth rate,—such backs must be at the least $8\frac{1}{2}$ inches thick, to the height of 12 inches at the least above the level of the mantle :

Provided always, that if the chimney be built in any wall, not being a party wall,—then the back of every such chimney-opening may be $4\frac{1}{2}$ inches less than the several thicknesses above described.

*Schedules.*SCHEDULE (F.)—*continued.**Chimney-openings back to back.*

And as to backs of all such chimney-openings,—If two chimneys be built back to back,—then the thickness between the same must be at the least of the thickness hereinbefore described for the back of one chimney-opening.

Angles of Flues.

And as to all flues, in reference to the angles thereof,—
If any flue be built with sufficient openings in it of not less size than nine inches square, and proper close iron doors and frames inserted in such openings, so that every part of such flue may be swept by machinery,—then every angle in such flue may be of any degree.

But if it be not so built,—then every such angle must be 135 degrees at the least.

And every salient or projecting angle within a flue must be rounded off four inches at the least, and protected by a rounded stone, or iron bar.

Close Fires.

And as to every oven, furnace, cokel or close fire, used for the purpose of trade or manufacture,—it must be six inches at the least distant from any party-wall, and must not be upon nor within a distance of 18 inches of any timber or wood work.

And the floor on or above which such oven, furnace, cokel or close fire shall be built or fixed, must be formed and paved under, and for a distance of two feet all round the same, with stone, brick, tile or slate at the least two inches thick, or other proper incombustible and non-conducting materials.

Chimney Shafts.

And as to chimney-shafts or flues,—

Every chimney-shaft or flue hereafter built, raised or repaired, must be carried up in brick or stone work all round, at least four inches thick, to a height of not less than three feet above the highest part of such portion of the roof, flat or gutter adjoining thereto, measured at the point of junction.

And as to any chimney-shaft, (except that of a steam-engine, brewery, distillery or manufactory)—the brick or stone work of such shaft or flue must not be built higher than eight feet above the slope, flat, or gutter, of the roof which it adjoins, measured from the highest point of junction, unless such chimney-shaft be built of increased thickness, or be built with and bonded to, another chimney-shaft, or be otherwise rendered secure.

SCHEDULE (F.)—*continued.**Schedules.*
—

And as to the chimney-shaft for the boiler furnaces of any steam-engine, or for any brewery, distillery or manufactory,—such shaft may be erected of any height, so that it be built in such manner, and of such strength and dimensions, as shall be satisfactory to the official referees, upon special application in each case.

Chimney-Pots, Tubes, &c.

And as to earthen or metal chimney-pots, tubes, funnels, or cowls of any description whatsoever,—if such pot, tube, funnel or cowl, be higher than four feet above the brick or stone work of the flue on which the same shall be placed, then it must be fixed two feet at the least into the brick or stone work of the flue on which it shall be placed.

Smoke Pipes.

And as to any metal or other pipe or funnel for conveying smoke, heated air, or steam, in reference to the position thereof,—such pipe or funnel must not be fixed against or in front of any face of any building in any street or alley, nor on the inside of any building nearer than fourteen inches to any timber or other combustible material.

Cuttings into Chimneys.

And as to every chimney-shaft, jamb, breast or flue already built, or which shall be hereafter built, in reference to cutting the same,—no such erection shall be cut into for any other purpose than the repair thereof, or for the formation of soot-doors, or for letting in, removing, or altering, stove-pipes or smoke-jacks, except as directed for building an external wall against an old sound party-wall.

SCHEDULE (G.)—(*see* Sec. 5.)

RULES concerning ROOF COVERINGS.

Materials.

With regard to roof coverings, in reference to the materials thereof,—

If the external parts of any roof, flat, or gutter of any building, or of any projection therefrom, and of any turret, dormer, lantern-light and other erection on the roof or flat of any

*Schedules.*SCHEDULE (G.)—*continued.*

building, be hereafter built or rebuilt, stripped, ripped or uncovered,—then every such part (except the door-frames and doors, window-frames and sashes of such turrets, dormers, lantern-lights, or other erections) must be covered with slates, tiles, metal, glass, artificial stone or cement, and such excepted parts may be made of such wood as shall be necessary.

Rain-water Pipes.

And with regard to the roof, flat and gutter of any building, and of any projection therefrom, and also balconies, verandahs and shop-fronts,—they must be so arranged and constructed, and so supplied with gutters and pipes, as to prevent the water therefrom dropping on to, or running over, any public way.

SCHEDULE (H.)—(see Sec. 5 & 51.)

RULES concerning DRAINS to Buildings hereafter built.

Drains into Sewers.

With regard to the drains of buildings of any class, and of every addition thereto,—

Before the several walls of any such building shall have been built to the height of 10 feet from their foundations the drains thereof must have been properly built and made good, (that is to say) if there be within 100 feet from any front of the building, or from the enclosure about the building, a common sewer into which it is lawful and practicable to drain,—then into such common sewer; and if there be not in such situation and within such distance any such common sewer,—then to the best outlet that can be obtained, so as to render, in either case, such drains available for the drainage of the lowest floor of such building, or addition thereto, and also of its areas, water-closets, privies and offices (if any).

And the inside of the main drains under and from every building for carrying off soil must be in transverse section, at the least equal to a circular area at least nine inches in diameter.

And every such drain must be laid to a fall or current of, at the least, half an inch to ten feet, and so as that the whole of every such drain within the walls of such building, shall be wholly covered over under the lowest floor, and independently thereof.

And every such drain within the walls of such building must be built and covered over with brick, stone or slate, and so as to render the drain air-tight.

And every part of such drain inside and outside the walls of

SCHEDULE (H.)—*continued.**Schedules.*
—

every building must be built of brick, tile, stone or slate, set in mortar or cement.

Cesspools and Privies.

And with regard to cesspools and privies,—

If there be a common sewer within 50 feet from any front of, or from the enclosure about, any house or other building,—then a cesspool must not be made for the reception of drainage from such house or other building, unless there be, or shall be built, a good and sufficient drain from such cesspool to such common sewer.

And if any cesspool be built under a house or other building,—then such cesspool must be built air-tight.

And every privy built in the yard or area of any building, or under any street or alley, must have a door, and be otherwise properly inclosed, screened and fenced from public view.

SCHEDULE (I.)—(*see* Sec. 5 & 52.)

RULES CONCERNING STREETS and ALLEYS hereafter formed.

Width.

With regard to every such street or alley, hereafter to be formed, in reference to the width thereof,—every street or alley must be of, at the least, the following width, from front to front, in every part thereof respectively; that is to say,—

Every street (excepting any mews) must be of the width of 40 feet at the least; but if the buildings fronting any street be more than 40 feet high from the level of the street,—then such street must be of a width equal, at the least, to the height of the buildings above such level.

Every alley and every mews must be of the width of 20 feet at the least; but if the buildings fronting any alley, or to any mews, be more than 20 feet high from the level of the alley or mews,—then such alley or mews must be of a width equal, at the least, to the height of the buildings above such level.

Entrances to Alleys.

And with regard to every such alley in reference to the entrance thereof,—every alley must have two entrances thereto, each being, at the least, of the full width of the alley, and one of the two, at the least, open from the ground upwards.

Schedules.
—SCHEDULE (I.)—*continued.**Measurement of Width.*

And with regard both to such streets and alleys,—the aforesaid width is to be ascertained by measuring (at right angles to the course thereof), from front to front of the buildings on each side of such street or alley.

SCHEDULE (K.)—(*see* Sec. 5 & 53.)

RULES concerning DWELLING-HOUSES hereafter built or rebuilt, with regard to Back-yards and Areas, and Rooms under-ground, and in the roof.

Back-yards.

With regard to back-yards or open spaces attached to dwelling-houses,—

Every house, hereafter built or rebuilt, must have an inclosed back-yard or open space of, at the least, one square, exclusive of any building thereon, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of, at the least, three-quarters of a square, above the level of the second story, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto.

And if any house already built, be hereafter rebuilt,—then, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of, at the least, three-quarters of a square, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto, there must be, above the level of the floor of the third story, an open space of at least three-quarters of a square.

And with regard to every building of the first class,—

Every such building must be built with some roadway, either to it, or to the enclosure about it, of such width as will admit to one of its fronts of the access of a scavenger's cart, of the ordinary size of such carts.

Lowermost Rooms.

And with regard to the lowermost rooms of houses being rooms of which the surface of the floor is more than three feet below the surface of the footway of the nearest street or alley, and to cellars of buildings hereafter to be built or rebuilt,—

SCHEDULE (K.)—*continued.**Schedules.*
—

If any such room or cellar be used or intended to be used as a separate dwelling,—then the floor thereof must not be below the surface or level of the ground immediately adjoining thereto, unless it have an area, fire-place and window as required for rooms and cellars of existing buildings let separately and used as a separate dwelling, and unless it be properly drained.

And with regard to every such lowermost-room or cellar in any existing building used or intended to be used as a separate dwelling,—

There must be an area not less than three feet wide in every part, from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back or external side thereof, and extending the full length of such side.

And such area, to the extent of at least five feet long and two feet six inches wide, must be in front of the window of such room or cellar, and must be open, or covered only with open iron gratings.

And there must be made for every such room or cellar an open fire-place, with proper flue therefrom.

And there must be a window-opening of, at the least, nine superficial feet in area; which window-opening must be fitted with a frame filled in with glazed sashes, of which, at the least, four-and-a-half superficial feet must be made to open for ventilation.

Attic Rooms.

And with regard to rooms in the roof of any building hereafter built or rebuilt, in reference to the number of floors of rooms in the roof, and to the height of such rooms,—there must not be more than one floor of such rooms, and such rooms must not be of a less height than seven feet, except the sloping part, if any, of such roof, which sloping part must not begin at less than three feet six inches above the floor, nor extend more than three feet six inches on the ceiling of such room.

Rooms in other Parts.

And with regard to rooms in other parts of the building, in reference to the height thereof,—every room used or intended to be used as a separate dwelling must be of, at the least, the height of seven feet from the floor to the ceiling.

SCHEDULE (L.)

LIST of FEES payable to the SURVEYORS under this Act.

Fees for New Buildings.

	Dwelling- House Class.	Warehouse Class.	Public Build- ings Class.
	£. s. d.	£. s. d.	£. s. d.
For any building erected on old or new foundations, as follows :—			
If the building be of the 1st rate .	3 10 0	3 10 0	3 10 0
Ditto extra 1st ditto .	5 5 0	. . .	5 5 0
Ditto . 2d ditto .	3 3 0	3 3 0	3 3 0
Ditto . 3d ditto .	2 10 0	2 10 0	2 10 0
If the building be of the 4th rate, and contain more than two stories .	2 2 0	2 2 0	2 2 0
If the building be of the 4th rate, and do not contain more than two stories	1 10 0	2 2 0	1 10 0
And with regard to buildings of the warehouse class, a further fee to be paid in respect of any additional 200,000 cubic feet, or portion of 200,000 cubic feet, in any such building, beyond the first 200,000 cubic feet	{ - - equal to one-half of the above fees respectively.	
And for inspecting and reporting to the official referees (s. 24) on party-walls and intermixed buildings,—			
If the building be of the 1st rate .	3 10 0	3 10 0	3 10 0
Ditto extra 1st ditto .	5 5 0	. . .	5 5 0
Ditto . 2d ditto .	3 3 0	3 3 0	3 3 0
Ditto . 3d ditto .	2 10 0	2 10 0	2 10 0
If the building be of the 4th rate, and contain more than two stories .	2 2 0	2 2 0	2 2 0
If the building be of the 4th rate, and do not contain more than two stories	1 10 0	2 2 0	1 10 0
For every insulated building . . .	1 1 0	1 1 0	1 1 0
For every detached building built for the purposes of trade or collection of tolls			10s. 6d.

For every attached or detached building, distinctly rated (except any such attached or detached building, built at the same time as the building to which it belongs, and carried up and covered in within twenty-one days after such building shall have been covered in within the meaning of this Act,) such fee as is hereby imposed in respect of additions to, or alterations of, buildings of the rate to which such attached or detached buildings shall belong.

Fee for Additions or Alterations.

For every addition or alteration made to any building (after the roof thereof shall have been covered in), which shall involve

SCHEDULE (L.)—*continued.**Schedules.*

the execution of works subject to the regulations of this Act, the following fees; that is to say,—

If the building be of the 1st rate	.	£	1	15	0
Ditto extra 1st ditto	.	.	2	10	0
Ditto . 2d ditto	.	.	1	10	0
Ditto . 3d ditto	.	.	1	5	0

If the building be of the 4th rate, and contain more than two stories 0 15 0

If the building be of the 4th rate, and do not contain more than two stories 0 10 0

And with regard to buildings of the warehouse class, a further fee, equal to one half of the above fees respectively, to be paid in respect of every additional 200,000 cubic feet, or any portion of 200,000 cubic feet, in any such building beyond the first 200,000 cubic feet.

Fees for special Duties.

For the following special duties performed by any surveyor, according to the enactments of this Act, where such duties shall not be performed incidentally to the building or rebuilding of, or adding to or altering, any building in respect of which any other fees may be payable; that is to say—

For attending to the cutting away of chimney-breasts for external walls,—

If the building be of the 1st rate	.	£	3	3	0
Ditto . extra 1st ditto	.	.	3	3	0
Ditto . . 2d ditto	.	.	} 2	2	0
Ditto . . 3d ditto	.	.			

If the building be of the 4th rate, and contain more than two stories 1 1 0

If the building be of the 4th rate, and do not contain more than two stories 0 10 6

For condemning party-fence-walls 0 10 6

For the inspection and removal of projections and ruinous buildings 0 10 0

For surveying party-walls not kept in repair, and consenting to notice of repair being served 0 10 0

For inspecting arches or stone floors over public ways 0 10 0

For inspecting formation of openings in party-walls 0 10 0

Fees for special Services not expressly provided for.

For any service performed by any surveyor which is required by this Act, but not comprehended under any of the foregoing heads,—

Such fee, not exceeding 2*l.*, as the official referees shall by writing under their hands order and appoint, with the consent of the commissioners of works and buildings.

SUMMARY of PROCEEDINGS to be taken or observed

Sect. of the Act.	Stages of Proceeding.	Steps to be taken.	By whom taken.
WORKS GENERALLY.			
13.	Before commencing the operations specified in this section.	Two days' notice to be given .	The builder. <i>See Definition, s. 13.</i>
13.	Before resuming operations, after being suspended for a period exceeding three months.	Two days' notice to be given .	The builder. <i>See Definition, s. 13.</i>
13.	On change of architect, master builder, or other superintendent.	Two days' notice to be given .	The builder. <i>See Definition, s. 13.</i>
14.	On the occurrence of any irregularity in building operations.	48 hours' notice to be given .	The district surveyor.
37.	As to openings hereafter made in external walls abutting on adjoining ground or buildings.	Notice to stop up within one month.	Adjoining owner.
SPECIAL SUPERVISION.			
15.	On completion of the carcass of a building subject to special supervision.	Notice for inspection thereof .	The architect or builder.
15.	On completion of amendments, or the entire completion of a building, subject to special supervision.	Notice relative thereto . .	The architect or builder.
PARTY-WALLS, &c.			
20, 21, 24, 25.	Before survey, repair, or pulling down of a party-wall, party-arch, or party-fence-wall.	Three months' notice before operations.	The building-owner. <i>See Definition, s. 13.</i>
24.	In the same case . . .	Notice for survey . . .	The building-owner. <i>See Definition, s. 13.</i>
„	In the same case . . .	Appointment of survey . .	The district surveyor .
33, 34.	As to pulling down rooms in intermixed property, and repairing or rebuilding party-fence-walls.	Notice of intention to build a party-wall, or as directed by official referees.	The building-owner .
„	In the same case . . .	Notice for inspection thereof .	The building-owner .
„	In the same case . . .	Appointment of survey . .	The district surveyor .
26.	As to pulling down a timber partition, and erecting or raising a party-wall.	Three months' notice of intention to build or raise a party-wall.	The building-owner .
28.	Excavation against existing party-wall for a deeper story, and for the erection of an external wall.	One month's notice of intention to cut away footings or breast or shaft of a party-wall.	The building-owner .
34.	Building a party-wall on line of junction of two pieces of vacant ground.	One month's notice for consent of adjoining owner.	The building-owner .
34.	In the same case . . .	Notice of consent . . .	The adjoining owner .
MODIFICATIONS.			
22, 23.	Modification or delay of intended work to suit adjoining owner.	Seven days' notice for consent .	The adjoining owner .
„	In the same case . . .	Application for decision	The adjoining owner .
„	In the same case . . .	Notice of application . .	The adjoining owner .

DULE (M.)

BUILDINGS ACT.

before and after NOTICES in relation to BUILDINGS.

With reference to whom taken.	Form of Notice to be given.	Place of Notice.	Subsequent Proceedings.
The district surveyor .	No. 1.	At the district surveyor's office.	£20 penalty for neglect. Existing buildings altered, &c. without notice, to be abated as a nuisance.
The district surveyor .	No. 2.	At the district surveyor's office.	£20 penalty for neglect.
The district surveyor .	No. 3.	At the district surveyor's office.	£20 penalty for neglect.
The builder	No. 4.	At the builder's office, or place of building or of alteration.	Proceedings by surveyor or official referees.
Owner of external wall .	No. 5.	According to sections as to notifications.	To be stopped up.
The official referees .	No. 6.	At the official referees' office.	Survey and approval or disapproval by official referees. Prohibition of use of irregular buildings of this class, and penalty of £200 per day.
The official referees .	No. 7.	At the official referees' office.	Survey and certificate.
The adjoining owner .	No. 8.	According to sections as to notifications.	Inspection by surveyor. s. 21.
The district surveyor and official referees .	No. 9.	At the district surveyor's and the official referees' offices.	Inspection by surveyor, and report to official referees.
The owners and agents, &c.	No. 10.	To building and adjoining owners and agents.	Inspection by surveyor, and report to official referees.
The adjoining owner, and district surveyor, s. 20.	No. 11.	According to sections as to notifications.	Erection of wall.
The district surveyor and official referees .	No. 12.	At the district surveyor's and official referees' office.	Inspection by surveyor, and report to official referees.
The owners and agents, &c.	No. 13.	To building and adjoining owners and agents.	Inspection by surveyor, and report to official referees.
The adjoining owner .	No. 14.	According to sections as to notifications.	Erection of wall, or raising a wall.
The adjoining owner .	No. 15.	According to sections as to notifications.	Execution of operations.
The adjoining owner .	No. 16.	According to sections as to notifications.	Execution of operations.
The building-owner .	No. 17.	According to sections as to notifications.	Erection of wall.
The building-owner .	No. 18.	According to sections as to notifications.	If consent not given, commencement of works must be delayed for decision of official referees.
The official referees .	No. 19.	At the official referees' office.	Delay in commencing of operations.
The building-owner .	No. 20.	According to sections as to notifications.	„ „

FORMS OF NOTICES AS TO WORKS.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 13, 1844.

1.—Notice by the Builder to the District Surveyor, Two Days before commencing Operations.

I do hereby give you notice, That I intend to (a)
 and that C. D. of is to be the (b)
 of the works to be executed; and that
 the said works will be begun on the day of
 Dated this day of

(Signature and address.)

** Certain penalties are attached to neglect in giving this
 Notice.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 13, 1844.

2.—Notice by the Builder to the District Surveyor, Two Days before resuming Operations.

I do hereby give you notice, That I intend to re-commence
 the (c) and that C. D. of
 is to be the (b) of the works to be resumed;
 and that the said works will be continued on the
 day of

Dated this day of

(Signature and address.)

** Certain penalties are attached to neglect in giving this
 Notice.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 13, 1844.

3.—Notice by the Builder to the District Surveyor, as to Change of Builder.

I do hereby give you notice, That with reference to the works
 specified in my notice of last

(a) *Describing the erection or intended operation in general terms, and whether it relate to any of the following matters:—*

“The erection of any building;”

or, “The making of any addition to or alteration in any building;”

or, “The building, pulling down, rebuilding, cutting into or altering any party-wall, external wall, chimney-stack or flue;”

or, The making of “any opening in any party-wall;”

or, The doing of “any other matter or thing by this Act placed under the supervision of the surveyor.”

(b) *Insert “architect,” or “builder,” or other superintendent to have charge of the works.*

(c) *Describing in general terms the works referred to in notice No. 1, and which works may have been suspended three months.*

SCHEDULE (M.)—continued.

Schedules.

E. F. (c) is to be placed in charge of
the said works, instead of *C. D.* the (c)
mentioned in the said notice.
Dated this day of
(Signature and address.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 14, 1844.

4.—*Notice by the District Surveyor to the Builder, as to any thing done in the Erection of any Building not conformably to the Act.*

I do hereby give you notice, That the (d) now
in progress (e) situate in (f)
is not conformable to the statute in the portions thereof under
mentioned; and I require you within forty-eight hours from the
date hereof, to amend the same.

Dated this day of at the
hour of by the clock.

Note irregularities referred to.

(Signature.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 37, 1844.

5.—*Notice by an Owner or Occupier to an adjoining Owner or Occupier, to stop up an Opening in an External Wall abutting on his Premises.*

I do hereby give you notice, That if within one month from the
date hereof you do not stop up the opening made in the external
wall of your premises situate in (g) and which
abuts on my (h) I shall, at your expense, cause
the same to be stopped up, conformably to the statute.

Dated this day of
(Signature and address.)

FORMS OF NOTICES AS TO SPECIAL SUPERVISION.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 15, 1844.

6.—*Notice by an Architect or Builder to the Official Referees,*

(c) Insert "architect," or "builder," or other superintendent to have
charge of the works.

(d) Insert "building," or "alterations," or "building operations," as the
case may be.

(e) Insert "under your superintendence," or "in the building belonging
to you," as the case may be.

(f) Insert the situation, as the case may be.

(g) Specify the situation.

(h) Insert "ground," or "building adjoining."

*Schedules.*SCHEDULE (M.)—*continued.*

as to Completion of the Carcass of a Building subject to special Supervision.

I do hereby give you notice, That the building now erecting under my superintendence in (h) being a building of the (i) and having been completed to the full height of the walls thereof, and the timbers, floors, roofs and partitions being fixed, I require you, in accordance with the statute, should you be of opinion that the building is subject to special supervision, to survey the same, and to certify accordingly.

Dated this day of
(Signature and address.)

. A penalty of £200 per day for using any such building without its being certified subsequent to notice as above and following.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 15, 1844.

7.—*Notice by an Architect or Builder to the Official Referees, as to Completion of Amendments, and of Buildings subject to special Supervision.*

I do hereby give you notice, That the building now erecting under my superintendence in (h) being a building of the (i) and having been completed in pursuance of your survey and notice subsequent, I require you, in accordance with the statute, to survey the same, and to certify accordingly.

Dated this day of
(Signature and address.)

. This notice will be used both with reference to the completion of amendments and to the entire completion of a building.

FORMS OF NOTICES AS TO PARTY-WALLS, &c.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 20, 21, 24, 25, 1844.

8.—*Notice to be given (Three Months before commencing Operations) by an Owner or Occupier, to an adjoining Owner or Occupier, that the Party-wall, or Party-arch, or Party-fence-wall is out of Repair.*

I do hereby give you notice, That I apprehend that the (k)

(h) *Specify the situation.*

(i) *Insert "first rate of second class," or "of the third class," as the case may be.*

(k) *Insert "party-wall," or "party-arch," or "party-fence-wall," as the case may be.*

*The Metropolitan Buildings Act.**Schedules.*SCHEDULE (M.)—*continued.*

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 20, 24,
1844.

10.—*Notice, in the same Case, by the District Surveyor, to the Building-Owner and adjoining Owner, and such one or more Surveyors and Agents by them appointed.*

I, _____ surveyor of the district, do hereby give you notice, That, in pursuance of an application made to the official referees and to me in that behalf, it is my intention to proceed to view the premises (r) _____ situate in _____ for the purpose of certifying the condition of the (s) _____ and whether any part thereof is so far out of repair as to require to be either wholly or in part repaired, or pulled down and rebuilt; and such survey I do intend to make on the _____ day of _____ next, at _____ by the clock in the _____ noon, in the presence of any one or more surveyors or agents on behalf of the building-owner and the adjoining owner.

Dated this _____ day of _____
(Signature and address.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 33, 34,
1844.

11.—*Notice to be given Three Months before commencing Operations, by an Owner to an adjoining Owner.*

I do hereby give you notice, That I intend to (t) _____ and that I intend to have such (u) _____ surveyed conformably to the statute; and that I have given notice to the district surveyor and to the official referees to survey the premises, and to certify accordingly.

Dated this _____ day of _____
(Signature and address.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 33, 34,
1844.

12.—*Notice, in the same Case, to the Surveyor and Official Referees.*

I do hereby give you notice, That I intend to (t) _____

(r) *Designated by number or other name.*

(s) *Insert "party-wall," or "party-arch," or "party-fence-wall," as the case may be.*

(t) *Specify the kind of operation, as to whether it be intended—*

"To raise a party-fence-wall;"

or, "To repair or rebuild a party-fence-wall;"

or, "To pull down and rebuild rooms in intermixed property, &c.;"
and specifying the situation, &c.

(u) *Insert "party-fence-wall," or "rooms in intermixed property."*

SCHEDULE (M.)—continued.

Schedules.

and that I require a survey thereof to be made, pursuant to the statute, and that in presence of such one or more surveyors or agents appointed by me, as undermentioned, or by C. D., the owner of the adjoining property, for the purpose of certifying whether the whole or any part (*u*) ought to be pulled down and rebuilt; and I do hereby also intimate that I have served a notice on C. D. to the like effect.

Dated this _____ day of _____
(Signature and address.)

*Names and addresses of one or more surveyors
or agents for building-owner.*

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 33, 34,
1844.

13.—*Notice, in the same Case, by the District Surveyor to the Building-Owner and adjoining Owner, and such one or more Surveyors and Agents by them appointed.*

I, _____ surveyor of the district, do hereby give you notice, That, in pursuance of an application made to the official referees and to me in that behalf, it is my intention to proceed to view the premises (*x*) situate in _____ for the purpose of certifying whether any part of such (*y*) require to be (*z*) and such survey I do intend to make on the _____ day of _____ next, at _____ by the clock in the _____ noon, in the presence of any one or more surveyors or agents whom the parties concerned shall appoint for that purpose.

Dated this _____ day of _____
(Signature.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 26, 1844.

14.—*Notice to be given Three Months before commencing Operations, by an Owner to an adjoining Owner, where no Survey is required.*

I do hereby give you notice, That I intend to (*a*) pursuant to the statute.

Dated this _____ day of _____
(Signature and address.)

(*u*) *Specify the kind of operation intended.*

(*x*) *Designated by number or other name.*

(*y*) *Specify the kind of operation intended.*

(*z*) *Insert "raised," or "repaired," or "pulled down and rebuilt," as the case may be.*

(*a*) *Specify the kind of operation, as to whether it be intended—*

"To pull down a timber partition, and instead thereof to build a party-wall," or "to rebuild a sound party-wall."
or, *"To raise a party-wall."*

SCHEDULE (M.)—*continued.*

ETROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, s. 28, 1844.

15.—*Notice of Intention to build an External Wall against existing Party-wall, and for that purpose to cut away Footings, Breast and Shaft of an existing Party-wall.*

I do hereby give you notice, That it is my intention, one month after the date hereof, to build an external wall against the existing party-wall by which our premises are parted, situate _____, and to cut away such portion of the footings or chimney-breast or shaft in such party-wall as will be necessary for that purpose.

Dated this _____ day of _____
(Signature and address.)

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 38, 39,
1844.

16.—*Notice of Desire to build a Party-wall on the Line of Junction of Two Pieces of vacant Ground.*

I do hereby give you notice, That I desire to build partly on my land or ground adjoining your vacant ground, and partly on your vacant ground, on the line of junction of the said premises(b), which will be of the under-noted thicknesses and dimensions; and should you consent thereto, I require you to signify such consent in writing on or before the day of next.

Dated this _____ day of _____
(Signature and address.)

Note of the thickness and dimensions.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 38, 39,
1844.

17.—*Notice of Consent to the Building of a Party-wall on the Line of Junction of Two Pieces of vacant Ground.*

I do hereby give you notice, That I consent to the building of a (b) partly on my land or ground adjoining your vacant ground, on the line of junction of the said premises, which I require to be of the under-mentioned thicknesses and dimensions, and other particulars.

Dated this _____ day of _____
(Signature and address.)

Note of the thickness and dimensions, and other particulars.

(b) Insert "party-wall," or party-fence-wall," or "external wall," as the case may be.

SCHEDULE (M.)—continued.

Schedules.

FORMS OF NOTICES AS TO MODIFICATION OR DELAY OF INTENDED BUILDING OPERATIONS.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 22, 23, 1844.

18.—*Requisition to a Building-Owner by an adjoining Owner as to Modification or Delay of intended Work on his behalf.*

I do hereby give you notice, That I require you to (c)
the works specified in your notice of the
day of in consequence of the inconvenience and
loss that would arise to me if the same were executed at the
time proposed by you; and if you do not consent hereto, or
dissent therefrom, within days, then, in pursuance of
the statute, you are hereby required to delay your intended opera-
tions until the official referees shall have determined thereon.

Dated this day of
(Signature and address.)

Note of modifications.

METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 22, 23, 1844.

19.—*Notice by an adjoining Owner to the Official Referees as to the Modification or Delay of intended Works of a Building-Owner.*

I do hereby give you notice, That C. D., of
having specified in his notice of the day of
certain works to be executed subsequent to the
day of next; and I having served upon him a requi-
sition in reference to the (d) of the works so
intended by him, in consequence of the inconvenience and loss
that would arise to me if the same were executed at the time
proposed by him, and he not having attended thereto, it is my
desire that a survey be made in pursuance of the statute, with
reference to such works, and the notices referred to.

Dated this day of (e)
(Signature and address.)

Note of modifications.

(c) Insert "modify, as under-noted," or "delay until the day of
," as the case may be.

(d) Insert "modification as under-noted," or "delay until the
day of," as the case may be.

(e) Within seven days after the previous requisition.

*Schedules.*SCHEDULE (M.)—*continued.*

— METROPOLITAN BUILDINGS ACT, 7 & 8 VICT. c. 84, ss. 22, 23,
1844.

20.—*Notice by an adjoining Owner to a Building-Owner as to Application to the Official Referees for Survey of intended Works with reference to the Modification or Delay thereof.*

I do hereby give you notice, That, in consequence of your not consenting to the (f) _____ of the works intended by you, as specified in my requisition of the _____ day of _____ last, I have applied to the official referees for a survey of the premises, pursuant to the statute.

Dated this _____ day of (g) _____
(Signature and address.)

(f) *Insert "modification," or "delay," as the case may be.*

(g) *Within seven days after the previous requisition.*

ANALYSIS
OF
RULES OF PRACTICE,
UNDER THE
PROVISIONS OF THIS ACT.

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ANALYSIS.



PART I.

NEW BUILDINGS, ALTERATIONS, AND ADDITIONS.

CHAPTER I.—*Erection of New Buildings, and Execution of Alterations in, or Additions to, existing Buildings, subject to the Controul of this Act, and to the Supervision of the District Surveyor.*

Before commencement of works, two days' notice to be given (Form, No. 1,) by the builder to the district surveyor at his office, under a penalty of £20 fine, and treble fees to district surveyor.

On suspension of works for any period exceeding three months, or on change of master builder, two days' notice (Forms, No. 2 & 3,) to be given by the builder to the district surveyor, under a penalty of £20, and pulling down of works executed during default of such notice (s. 13).

If the surveyor or official referees be refused admittance by the builder at any reasonable time, works executed during such refusal are liable to be pulled down.

On receipt of forty-eight hours' notice from the district surveyor of any irregularities, (Form, No. 4,) the works complained of must be amended forthwith, in conformity with the Act, (s. 14,) or in default, the district surveyor is empowered to amend them at the expense of the builder. In case of dispute between the builder and the district surveyor, appeal may be made to the official referees, whose decision is to be final, both as to the matters in dispute, and as to the costs of the appeal.

Fees become payable to the district surveyor one month after covering in, and completion of walls, roof, timbers, partitions, and floors of new buildings; and fourteen days after completion of any alterations or additions to existing buildings (s. 77).

. It is as well to premise, that two days' notice must be given to the district surveyor in all cases, before commencement of any of the works hereinafter detailed; and, indeed, of any works whatsoever, which come within the jurisdiction of this Act.

CHAPTER II.—*As to the same Proceedings, where the Buildings are subject to the special Supervision of the Official Referees, as well as to the Supervision of the District Surveyor.*

The works having been completed according to the preceding chapter, to the satisfaction of the district surveyor, seven days' notice (Form, No. 6,) must be given by the builder to the official

referees; whose approval is to be certified to the builder within the next seven days (s. 15).

In case of disapproval by the official referees of any portion of the work, notice is to be given by them in writing to the builder, stating their objections.

On amendment of the irregularities, the builder gives fresh seven days' notice to the official referees, (Form, No. 7,) who must approve or disapprove within seven days.

In case of approval the certificate must be officially sealed by the registrar of buildings. In case of disapproval, the same course must be gone over again, until the official referees are satisfied.

The penalties for using any building subject to the supervision of the official referees, without their certificate of approval, is to be fixed by two magistrates, at not more than £200 for every day such building shall have been so used.

CHAPTER III.—*As to Buildings included in Schedule (B.), which are subject to the special Supervision of the Official Referees alone.*

Before commencement of the works, notice to be given to the official referees by the builder, and the proposed plans to be submitted to them. The official referees having viewed and approved of the situation and plans of the proposed building, the builder may proceed on receipt of such approval.

The official referees will then fulfil the same duties of inspection during progress and approval on completion, as would have belonged to the district surveyor (s. 16,) if the building had been such as to be included under section 1, above described.

The penalty for using any building subject to the special supervision of the official referees, without their approval, to be fixed by two magistrates, at not more than £100 for every day such building shall have been so used.

PART II.

PARTY-WALLS, PARTY-FENCE-WALLS, AND PARTY-ARCHES IN INTERMIXED PROPERTIES.

CHAPTER I.—*Erection of original Division Walls, Party-walls, or Party-fence-walls on the Line of Junction of vacant Ground.*

Building-owner to give one month's notice (Form, No. 16,) to adjoining owner, who must signify his consent in writing within that time (Form, No. 17). On receipt of consent, building-owner may erect such walls, &c. on equitable proportion of adjoining owner's ground, but altogether at the expense of the building-owner, who must also pay a fair value for the proportion

of the adjoining owner's land used by him for building such party-walls, &c. The value to be decided by the official referees (s. 38).

In case the adjoining owner should 'not give his 'consent, then the building-owner must erect the walls, &c. as external walls altogether on his own ground.

. Although the building-owner cannot compel the adjoining owner to contribute to the building of the party-walls, &c. herein alluded to, such adjoining owner cannot make use of such party-walls, &c. without first contributing his fair proportion of the cost of the same (s. 46).

CHAPTER II.—*Rebuilding of ruinous, insufficient, or defective Party-walls.*

Building-owner to give notice (Form, No. 8,) to adjoining owner three months before commencement of works (s. 21).

Adjoining owner, within seven days after receipt of such notice, (s. 22,) to signify his consent to or dissent from the execution of the works; and also to state, if dissenting, the period of delay, or the variations or modifications in the works which he may require (Form, No. 18).

Building-owner, within seven days after receipt of such notice of variations or modifications, &c., to signify his consent to or dissent from the same: the silence of the building-owner in this case to be deemed dissent.

IN CASE OF DISSENT, adjoining owner to apply, within seven days, to official referees, (Form, No. 19,) and to serve notice of such application (Form, No. 20,) on the building-owner.

Building-owner, on receiving notice of such application, to delay all proceedings, until the decision of the official referees be known; such decision to be finally binding on both parties.

IN CASE OF ABSENCE OR LEGAL DISABILITY OF ADJOINING OWNER, building-owner may serve the notice required (Form, No. 9,) on the district surveyor and official referees (a); surveyor then to appoint a view forthwith, giving notice to both parties, (Form, No. 10,) and certify to the official referees whether the work is proper or improper to be done, or whether any and what modifications and variations ought to be adopted; also what compensation is to be paid to the adjoining owner for the ground to be taken by the building-owner (s. 24).

Official referees, on receipt of report from district surveyor, to give notice of such report to all parties, who are to appeal against the same to the official referees within seven days; and, in default of any appeal, the official referees will confirm the sur-

(a) It does not appear in the Act what proof is required of absence or legal disability. The safest mode of proceeding would therefore seem to be to suffer the seven days allowed to the adjoining owner to elapse before service of notice on the district surveyor and official referees, for the authorisation of the compulsory proceedings hereinafter detailed.

veyor's report, and authorise the building-owner to proceed; or, on appeal, will view the premises, and make such alterations and modifications as may appear to them just and proper: the award of the official referees to be final.

The building-owner cannot, however, under any circumstances, unless by consent, proceed before the expiration of three months from the date of the first notice to the adjoining owner.

. The building-owner must, in all cases, pay every expense incurred throughout these proceedings (s. 20); he must also compensate the adjoining owner for any additional ground which he may require (s. 24); and make good every damage incidental to the work sustained by such adjoining owner; and although the words of the Act are not sufficiently explicit on this last head, as to what is to be deemed incidental damage, it appears perfectly clear that the Act intends the building-owner to bear (as indeed he ought) all expenses of reparation of the adjoining owner, both exterior and interior, substantial and ornamental (ss. 28, 29); but it would not seem, however, that he (the building-owner) is rendered liable for any loss of rent sustained by the adjoining owner.

CHAPTER III.—*Rebuilding of Party-walls, &c., for Buildings of a higher Class or Rate than those adjoining.*

Any building-owner rebuilding a sound party-wall requiring no survey, must give three months' notice, (Form No. 14.)

The building-owner has the option of rebuilding a party-wall of the highest rate, according to the practice detailed *ante*, (Chap. II.), or of building an external wall against the adjoining party-wall, always provided that such party-wall be sound (s. 27).

The building-owner will be equally bound to make good any damage resulting from or consequent on his operations, as if he rebuilt the party-wall (s. 28).

It does not appear that any notice (*b*) is necessary to the adjoining owner, in case of erection of an external wall, unless some part of the party-wall be cut away or otherwise affected, in which case one month's notice (Form, No. 15,) must be given by building-owner (s. 28).

. The building-owner, by constructing an external wall against a sound party-wall, does not thereby give up the right to his fair proportion of the soil on which such party-wall is built, nor of the materials of which it is composed (s. 30); but he has a right to compensation for both, in case such party-wall should be at any time pulled down and rebuilt by the adjoining owner, and the soil and materials made use of by him, any

(*b*) Courtesy, however, as well as a wish for security against any proceedings, has always hitherto dictated the service of a notice on the adjoining owner, even where such notice was not legally necessary.

dispute as to value to be finally settled by award of the official referees.

It would appear, however, that if the adjoining owner, on pulling down such party-wall, build an external wall also, and thereby make no use of the soil or materials, he is not bound to pay any compensation for the same.

CHAPTER IV.—*Raising of Party-walls.*

Building-owner to give two days' notice (Form, No. 1,) to district surveyor, and to bear all expenses incidental to the work ; also to raise the chimneys of the adjoining owner, and to pay compensation for all damage sustained by such adjoining owner (s. 31). Such adjoining owner cannot however use any wall so raised, without first paying his fair proportion of the cost of the same (s. 31).

CHAPTER V.—*Repairing, Rebuilding, and Raising of Party-fence-walls.*

Either owner may repair, rebuild, or raise to the height of nine feet from the ground, any party-fence-wall on giving two days' notice to the district surveyor, and payment of all expenses and damages (s. 32).

Either owner may pull down and rebuild any party-fence-wall which is insufficient for an intended building, on observance of the prescribed regulations, and payment of all expenses and damages.

* * Although the Act is silent on the subject, it would seem that the building-owner in the latter of these two cases must give the notices prescribed, and in all other matters go through the several proceedings laid down in Chap. I. Part II. (*ante*, page 158) for the erection of original party-walls.

CHAPTER VI.—*Pulling down Rooms in existing Buildings on Intermixed Property ; and Erection of Party-walls on the Line of Junction.*

The building-owner to give notice to the adjoining owner of his intention to build ; and also to the district surveyor (Forms, No. 11 & 12), three months before commencement of the works (s. 32). In case of dissent by the adjoining owner, notice of appointment for survey to be given to both parties (Form, No. 13), by the district surveyor, who, after survey, will report to the official referees, who will authorise the work to proceed, and award the proportion of expense to be borne by each party (ss. 34, 50).

CHAPTER VII.—*Pulling down of existing Timber Partitions, and Substitution of Party-walls.*

The building-owner to give notice (Form, No. 14,) to the adjoining owner, three months before commencement of the works ; all other proceedings will then follow as in the case of the

erection of an original party-wall. (See *ante*, Part II. Chap. I.), with the following exceptions (s. 33):—

1. That the taking down of the fronts of either of the adjoining buildings to the height of one story, or for a space equal to one-fourth of such front from the level of the second floor upwards, makes the substitution of a party-wall for an existing timber partition, compulsory on all parties (s. 33).

2. That in any case of such substitution, all the owners on either side are bound to contribute their proportions of the expense, which in other cases falls upon the building-owner alone (s. 33).

* * The several Inns of Court are specially exempted from the operation of the Act in this respect (s. 35).

CHAPTER VIII.—*Excavation by a Building-owner against an existing Party or External Wall, for the purposes of a lower Story or a deeper Foundation.*

Any building-owner desirous of excavating against an existing party or external wall, or to cut away the footings, or chimney-shaft or breasts of any such wall, to give one month's notice (Form, No. 15,) to adjoining owner.

The chimney-breasts and shafts, and the footings so cut away, to be made good in cement by the building-owner, under the supervision, and to the satisfaction of, the district surveyor (s. 28).

The wall so cut away to be shored up, underpinned, and made good at the cost of the building-owner; and the building-owner to make good all damages of every kind sustained by the adjoining owner from the effects of the work; and if the wall, from the effects of such cutting away, should be condemned as ruinous or insecure by the district surveyor on survey, by application of any party, or otherwise: the building-owner is bound to rebuild such wall, and make good every damage sustained by the adjoining owner, in consequence of, or incidental to, such rebuilding (s. 29).

CHAPTER IX.—*As to Openings in Party or External Walls, abutting on, or overlooking the Ground or Buildings of the Adjoining Owner.*

If any owner make an opening in any party or external wall, or if any such exist without right, the adjoining owner must serve notice (Form, No. 5,) on the owner having made such opening, to stop up the same within one month (s. 37).

In case of neglect of such notice, the owner giving such notice may stop up the same, and recover the costs from the first owner, according to the means provided by the Act.

* * The owner of the opening so stopped up, has, of course, his remedy by action of trespass in case of right by uninterrupted possession, &c., according to the 2 & 3 Will. IV. c. 71. (See note to section 37 of this Act, *ante*, page 41).

PART III.

RUINOUS, OR DANGEROUS BUILDINGS.

CHAPTER I.—*Ruinous Buildings.*

The district surveyor on receiving notice of any buildings being in a ruinous or dangerous state, to report the same forthwith to the official referees.

The official referees having directed a survey, the surveyor to make the same, and report again to the official referees.

The official referees on receipt of such report of the district surveyor, to transmit a copy of the same to the lord mayor, (if within the city of London,) or to the overseers of the poor, (if without the city of London,) and the lord mayor or overseers, as the case may be, must erect a hoard for the protection of the public, and give notice to the owner to repair or pull down the building within fourteen days (s. 40).

If within the said fourteen days the owner does not begin to repair or pull down, and afterwards complete the same with all reasonable despatch, the lord mayor, or a magistrate, on application by the overseers, and proof of service of notice, will authorize the pulling down of the dangerous portions, and defray the expenses out of the sale of the materials; the owner being liable to make good any deficiency (ss. 40, 41, 42).

In case of appeal by the owner, or any other parties, against the condemnation of any building certified by the district surveyor as dangerous to the official referees, the official referees must view the same, and their decision will be final (s. 40).

CHAPTER II.—*Ruinous Chimneys.*

In case of chimneys being dangerous in the opinion of the district surveyor, the occupier or owner must repair the same within thirty-six hours after receipt of notice (s. 43).

If there be no occupier nor owner, or if the occupier or owner neglect the notice, the district surveyor to report to a magistrate, who will order the reparation, securing, or pulling down of the same, as he may deem best for the public safety.

The expenses having been certified by the official referees, to be paid by the overseers of the parish, and to be recoverable by such overseers from the then occupier or owner, or from any future occupier or owner of the property, the occupier being authorised to deduct the same from his rent.

In case of chimneys falling, the owner of such chimneys is liable to pay to the adjoining owner all damages consequent upon such fall (s. 44).

This provision, however, does not extend to damage done by the fall of all, or any portion of a party-wall.

PART IV.

LEGAL SERVICES AND REMEDIES.

CHAPTER I.—*Service of Notices.*—(1.) *Upon whom to be served.*

With regard to the service of the required notices upon *the owner or occupier* of any building or ground, the Act provides (s. 101), that—

If such owner be a MARRIED WOMAN, other than a *cestuique* trust in regard to such property, then such notice must be given to her husband; or—

If such owner be an INFANT, IDIOT, or LUNATIC, or CESTUIQUE TRUST, then such notice must be given to the guardian, trustee or committee of such infant, idiot or lunatic, or *cestuique* trust; or—

If such OWNER, husband, trustee, guardian or committee, is NOT KNOWN OR CANNOT BE FOUND, then such notice must be given to the occupier of the building, fence or ground to which it may relate; or—

IF SUCH BUILDING OR GROUND BE UNOCCUPIED, then the notice must be affixed to some conspicuous part of such building, fence or ground, at a height of not more than nine feet from the ground.

IF THE OCCUPIER of the ground or building in respect of which the notice is to be given, say he IS NOT THE OWNER, then notice must be given to his immediate landlord, whose name and address the occupier is bound to furnish.

IF THE LANDLORD BE ONLY PART OWNER, or in receipt of part only of the rents or profits, on receiving notice as above, he is bound to transmit a copy of it to the other persons interested. If he fail to do this, and any of those persons suffer damage through his neglect, he or they may have a remedy against him, but the service upon the immediate landlord or his agent by or on behalf of the person bound to serve it in the first instance will be deemed a sufficient service, notwithstanding any default in the party so served.

(2.) *How to be served.*

Notice to the OCCUPIER must be served (s. 113,) either on him personally, or by leaving it with some inmate of the house, or by affixing it on some conspicuous part of the premises, as directed above.

Notice to the OWNER must be served (except in certain cases specified below) either on him personally, (s. 114,) or by leaving it with some inmate at his usual place of abode, or at his last known place of abode, or by affixing it as above directed.

If the owner be not within the limits of the Act, and have no agent acting for him in respect of the premises concerning which the notice is to be served, within those limits, then notice may be transmitted to him by the post (s. 115), taking care to forward it at such a time as shall allow him, after the receipt of the letter, the full period of notice required in the case; and also that the letter be registered.

NOTICE TO THE SURVEYOR must be served at the office of such surveyor (s. 116).

NOTICE TO THE OFFICIAL REFEREES, or any one of them, must be left at the office of the registrar of metropolitan buildings (s. 116).

CHAPTER II.—*Entry on Premises for the purposes of Inspection.*

Any works done or to be done in pursuance of this Act, are to be completed to the satisfaction of the district surveyor and the official referees, and for the purpose of ascertaining the manner in which they have been executed, those parties are empowered to enter upon the premises at all convenient times for the purpose of inspection. Also before any work is begun, the surveyor is authorised to inspect the premises. If any person refuse to admit the parties thus empowered to enter and inspect (s. 17), he forfeits for every offence a sum not exceeding £20, and the work is liable to be pulled down; and the parties so refused may, with the aid of a peace-officer, make a forcible entry on the premises for the discharge of the duties which the Act has imposed on them (s. 17).

CHAPTER III.—*Entry on Premises for the purpose of building Party-walls, Party-fence-walls, or executing other Works under the Provisions of the Act.*

For the purpose of facilitating the execution of works authorised under this Act, the building-owner or some person on his behalf, may, accompanied by a constable or other officer of the peace, make an entry on the adjoining premises (s. 36), so far as may be necessary for executing such work, at any time between the hours of six in the morning and seven in the afternoon (Sundays excepted). And if the outer door be closed, and the parties refuse to open it, or the house be unoccupied and the door fastened, then such outer door may be broken open, and all furniture, fixtures and goods in the way of the necessary operations removed, either to some other part of the house, or to any place of safe custody. And from and after the first entry, the builder and all his men may have free access to the premises, and be permitted to remain thereon during all the usual hours of working; and if any hindrance be offered, the person guilty will forfeit a sum not exceeding £10.

CHAPTER IV.—*Summons for building contrary to the Act, or for Refusal to amend on Notice.*

In the case of every building subject to the supervision of this statute; if the district surveyor on surveying it give a notice of disapproval, it is the duty of the architect or builder (s. 14) to amend the parts complained of, after which a fresh survey is made when the work is complete, and, if approved of, a certificate of approval is given by the official referees. If, before that certificate be obtained, a building subject to special supervision be used for any purpose, the party offending may be fined not more than £200 per day for the time during which it has been so used, if the building be of the highest rate. If it be of the rate in Schedule (B.) the fine shall not exceed £100 per day (s. 16).

If in building, repairing, or altering within the jurisdiction of this Act, any of its regulations are infringed, the builder is to be summoned before two justices (s. 18), and compelled to enter into recognizances to alter and amend the work, on pain of imprisonment until such alteration or amendment is effected.

If any workman, without the consent or privity of his master, and through carelessness or wilfulness, infringe the provisions of the statute (s. 19), he may be summoned before two justices, and, on conviction of the offence, be liable to forfeit a sum not exceeding fifty shillings, and, in default of payment, may be committed to prison for any period not exceeding one month.

CHAPTER V.—*Recovery of Costs and Expenses in certain Cases.*

For the purpose of reimbursing any building-owner for the expense of the following works, undertaken in respect of any party structure built to separate the buildings or premises of others from his own, the Act provides compensation (s. 46), viz.:—

- 1st. For any party-wall built on the line of junction between two buildings.
- 2nd. For any party-wall between a building and vacant ground belonging to different owners or occupiers.
- 3rd. For any ruinous party-wall rebuilt in pursuance of this statute.
- 4th. For timber partitions pulled down and party-walls built.
- 5th. For a new party-wall or party-arch built in compliance with the provisions of this Act between intermixed properties.
- 6th. For any party-wall built on the site of a party-wall or party-fence-wall, and used otherwise than as a party-wall by the person who has not built the same.
- 7th. For every other case of reimbursement in respect of any party structure—that if the party structure be built in conformity with the provisions of the Act certain compensation may be recovered by the building-owner (at whose expense the work shall have been done) from the adjoining

ing owner. And that until the expenses so due shall have been paid, the building-owner shall be possessed of the sole property of the party structure and of the ground whereon it stands, which shall vest exclusively in him, in contravention of the general rule of law, that by building on another man's ground you abandon the property in the structure to the owner of the soil.

Within twenty-one days of the completion of the work (s. 47), the building-owner or party at whose expense the work has been done, is to deliver to the adjoining owner an account of the costs incurred, including the quantities and prices of the work, and the deductions (if any) which the adjoining owner is entitled to make; and when this account has been approved by the official referees, payment may be demanded, and if not made within ten days then the claimant may proceed in a summary way before two justices or a police magistrate (s. 102), who may issue a warrant of execution for the amount, or, in default of goods and chattels to satisfy the writ, may commit the debtor till the debt and costs are paid.

CHAPTER VI.—*Recovery of Cost by Occupiers and Part-owners.*

Where the occupier has paid costs to which the owner was liable, he is at liberty to deduct them from the rent due or falling due from himself to the latter (s. 48).

And where one part-owner has paid costs to which any other part-owners are bound to contribute, the proportions in which they shall contribute, are, in case of dispute, to be determined by the official referees (ss. 49, 50); and the party entitled to claim contribution may receive the rents and profits of the buildings in respect of which the expenses have been incurred, or obtain a warrant of distress by application to two justices.

CHAPTER VII.—*Indictment of Dwellings unfit for Habitation.*

With regard to buildings of the dwelling-house class, no room or cellar in them built in contravention of the rules specified in Schedule (I.) can be let as a dwelling, nor occupied as such (s. 53); nor can any room of less area than one hundred square feet, nor any built wholly underground, be used for any other purpose than as a ware or store-room; nor can any part of any building of the dwelling-house class be used as a pig-sty, dog-kennel, or for any other noxious purpose; And on conviction for any offence against these provisions before two justices, the party convicted is liable to forfeit for every day that such offence has continued a sum not exceeding 20 shillings, half of which penalty shall go to the person suing for the same, and half to the poor of the parish in which the offence shall have been committed.

CHAPTER VIII.—*Indictment of dangerous Trades.*

No buildings of any class can be erected nearer than fifty feet from any building in use for a business dangerous in respect of fire and explosion (s. 54). Nor can any one commence such a business in a building at any less distance than forty feet from any public way, or than fifty feet from any other building; or if such business be now carried on in any situation within those distances, then at the expiration of twenty years from the passing of this Act, it shall no longer be lawful to continue it.

If any person erect any building near to such dangerous business, contrary to this Act, then, on conviction before two justices he shall forfeit £50.

If any person establish anew such a business, or carry it on contrary to this Act, he shall forfeit on conviction as before, a sum not exceeding £50 for every day that the offence continued, and reasonable costs to the prosecutor, to be recovered by distress, or, if there be no distress, the offender to be imprisoned for any period not exceeding six months.

CHAPTER IX.—*Indictment of unhealthy Trades.*

As regards proximity to buildings wherein trades injurious to health are carried on, the provisions contained in section 55 are in all respects similar to the last. They are similar also in the penalty imposed on offenders, and the mode of recovery, by distress or imprisonment.

The penalty, however, can be mitigated at the discretion of the justices (s. 56), if it should appear that the party has used all available means for mitigating the injurious effects of such business; or the justices have power to suspend the execution of their order, where the party has made due endeavours to mitigate the noxious effects of the trade, though he has not employed the best means, and to give him an opportunity within a limited time of adopting such other and better means as to the court shall seem fit.

An appeal to the sessions is allowed in cases of conviction in respect of trades not enumerated (s. 57).

And all former remedies, criminal or civil, are left as much available as before the passing of the Act (s. 60).

CHAPTER X.—*Appeals.*

On the conviction before two justices of any person for carrying on any noxious trade not specifically mentioned in the Act, and not declared to be a nuisance by some superior court, the party convicted may appeal to the quarter sessions, to be held within four months from the time of conviction (s. 57), and obtain a trial by jury (s. 58).

Notice of appeal must, however, be given within two days of the conviction, and the appellant must enter into recognizances, with two sureties, to try such appeal.

If the premises are in the city of London, the appeal must be to the quarter sessions thereof.

If the premises are in Middlesex, Kent, or Surrey, or in the city or liberties of Westminster, or in the liberties of the Tower, the appeal must be to the quarter sessions thereof respectively.

The decision of the quarter sessions is to be final.

If the appeal be to the quarter sessions of Kent or Surrey (s. 56), the trial is to be at some general or special adjournment thereof, to be held within six weeks next after the original sessions.

If the matter relate to Surrey, the adjourned sessions to be held in Southwark.

If it relate to Kent, the adjourned sessions to be held at Greenwich.

All further adjournments to be within three weeks of the last meeting.

CHAPTER XI.—*Purchase of noxious or offensive Trades.*

Two-thirds of the inhabitant householders of any parish or place where such business is carried on, may memorialize the Sovereign in council for its removal (s. 61)—promising compensation to the parties by levying a rate or raising a subscription. The committee of the privy council for trade to report thereon—when the Sovereign may order that its removal be purchased either at the expense of the memorialists or by means of a rate. Sheriff to summon a jury who shall assess the compensation to be paid to the party carrying on the business and to the owner of the premises.

If within three months of the verdict of the jury the money be raised, and paid, or tendered, then within three months from such payment or tender it shall cease to be lawful for the party carrying on such trade to continue it, or for the owner of the premises to suffer them to be so used.

If the Sovereign order the compensation to be paid by a rate, then the overseers of the parish may raise it as part of the poor's-rate on the parish generally or otherwise, as the order in council shall direct (s. 62).

CHAPTER XII.—*Informalities in Distress and Actions thereon.*

Though any distress under the provisions of this Act be informal, it shall not be deemed unlawful, nor the party making the same a trespasser *ab initio*. But for any irregularity an action for damages may be brought and full satisfaction for special damage only, recovered—(s. 100).

CHAPTER XIII.—*Recovery of Fees by District Surveyors.*

ONE MONTH after the roof of any building erected and surveyed under this Act has been covered in, and the walls carried up to their full height, and the principal timbers, partitions and floors fixed in their places: And **FOURTEEN DAYS** after the completion of any addition, alteration and repair; and **FOURTEEN DAYS** after each special service shall have been performed, and on tendering an account and receipt, the surveyor will be entitled to the fees specified in Schedule (L.)—(s. 77). If payment be refused a justice may issue a warrant to levy the amount by distress, as in cases of poor's-rate.

If the work shall not have been done in conformity with the provisions of the Act, the surveyor will not be entitled to his fee; or if he shall, under these circumstances, have received it, he may be compelled to refund on application to the official referees.

CHAPTER XIV.—*Recovery of Awards.*

All sums of money due under any award or certificate made under this Act, in respect of any works done in pursuance thereof, may be recovered in a summary manner (s. 102,) by application to two justices of the peace, or, if the matter arise within the district of the metropolitan police, to a police magistrate, who may issue a warrant to levy the amount by distress on the goods and chattels of the person in default, or, if there be no sufficient distress, then to commit him to prison until the fine be paid.

CHAPTER XV.—*Prosecutions for Offences under the Act, Limitation of Penal Actions, and Rules prescribed with regard to Civil Proceedings against Persons acting under the Act.*

For any offence against the provisions of this Act, complaint may be made before any justice or police magistrate (s. 103), who may summon the offender, and, on conviction before two justices or a magistrate, the penalty imposed may be levied by distress, or the offender imprisoned until the penalty and costs are paid.

Every action brought to recover the amount of a penalty or forfeiture incurred under this Act, must be brought within six months of the time when the forfeiture was incurred (s. 106).

And, except where the amount of the penalty shall be otherwise specifically appropriated, the person suing for it shall be entitled to claim it for himself (s. 107).

No action can be maintained against any one for any act done in pursuance of the provisions of this statute unless commenced within six months of the time of the act committed (s. 108); and

TWENTY-ONE DAYS' notice of such action must be given in writing.

If the cause of action have arisen in the city or liberties of London, the venue must be laid in London.

If without those limits, the venue must be laid in Middlesex.

The defendant may plead the general issue, and give this Act and the special matter in evidence.

If the verdict be for the defendant he may recover full costs ; and on application by the defendant to the court in which any such action shall be pending, the plaintiff may be compelled to give security for costs (s. 109).

CHAPTER XVI.—*Removal of Orders, Writs, &c. by Certiorari.*

No orders or proceedings under this Act are removable into the superior courts (s. 104), except in case of conviction of any party for carrying on some noxious business not specified in the Act.

CHAPTER XVII.—*Exemption from Stamp Duty.*

Every certificate and award required to be made and signed by the surveyor or official referee under this Act is exempted from stamp duty (s. 118).

FIXTURES.

CHAPTER I.

FIXTURES IN GENERAL—THEIR ORIGIN—AND DEFINITION OF THE TRUE MEANING OF THE TERM.

THE word **FIXTURE**, as employed in the English vocabulary, has three distinct meanings, all denoting the same thing essentially, varied by the medium through which it is viewed, or the context to which it is applied.

These three meanings may be severally designated as “colloquial,”—“supposititious,”—and “legal,” or “real.”

“Colloquially,” the word **FIXTURE** is applied to every item or thing added to a house, for the especial convenience of the tenant. We say “added,” because the term is only colloquially applied to such things as a builder would not execute unless under a special contract; and then most frequently without reference to their ownership, whether in the landlord or the tenant—but simply as relating to things necessary to the tenant’s convenience, but not essential to make a house generally tenantable, or, as Lord Denman has recently better expressed it, “habitable;” and although this is a most indefinite, and unsatisfactory use of the term, it is as certainly the sense in which it originated, and from whence its subsequent and more precise definitions have sprung.

It must be borne in mind, that not only the word “**FIXTURE**,” but the very thing itself, (with few ex-

ceptions) is of comparatively recent origin ; created by a fashion, itself of no remote date, and rendered necessary by luxurious cravings of which our ancestors had no knowledge, and for which, therefore, they made no provision.

So lately as the reign of George the First, the few fittings in general use were such as almost wholly to preclude the use of the word fixture. The "dogs" in the chimney-corner supported the firewood, as now the stove-grate holds the coal ; and these "dogs" were necessarily detached, in order to accommodate the various dimensions of the fuel. The blazing kitchen fire, formed in the same manner, needed no patent range. The turnspit at his wheel performed the daily service of the smoke-jack ; the chopping-block answered the purposes of the modern dresser ; the shining pewter plates and dishes were displayed upon oak ledges let into the walls ; and neither cupboard nor inclosure was to be seen.

In the hall, the chamber, the dining-room, or the library, the tapestried walls or the richly carved oak wainscot precluded all idea of affixing any thing to them. Even to the present day, the few remaining old baronial halls and castles contain neither closet nor cupboard ; but massive chests, more or less ornamented according to their locality, occupy the sides, or fit into the corners of the rooms. Here, too, the chimney "dogs" supplied the place of stoves or grates ; and bells were never thought of, where a host of followers attended constantly within their master's call.

In those days domestic fixtures had scarcely an existence.

But as time gradually wore away those feudal distinctions which had so long existed, the former picturesque but inconvenient style of building gave place to one at once more economical, and better adapted to the wants of that middle class then rising rapidly into importance. The Dutch followers of the House of Orange introduced many improvements into our system of domestic building. The refine-

ments of other countries were adapted to our dwellings, and economy of space and regularity of arrangement began to be regarded as matters of some moment.

Then arose speculators in dwellings, a class unknown when the old English manor-house was the pattern for the village, which owed its existence to the resident lord-paramount; and to these speculators it became an object of the greatest importance so to contract their dimensions and increase their contrivances, as to enable them to realise the greatest quantity of property with the smallest outlay of capital or space.

With these speculators the modern meaning of the term **FIXTURE**, as applied to articles of domestic convenience or ornament, originated (*a*); and they, using the term in the sense here designated as “colloquial,” from want of any authorised decisions which might define the true and limited meaning of the word, engrafted on that “colloquial” sense, at that time in use by both parties, the meaning here designated as “supposititious,” laying claim to all those conveniences which their tenants had introduced into their houses, and affixed to the walls and floors, and asserting that these *fixtures* became their property, inasmuch as having been affixed to the freehold or “realty,” they were irremovable; “because”—so they argued—“when once annexed, they became part and parcel of the freehold, and altogether lost their personal character.”

The ancient rule of law was altogether in favour of its interpretation by the landlord to his own gain, inasmuch as it inculcated the principle that whatsoever is affixed to the realty became a part of it; the mere act of annexation merging the personality in the freehold, just as any term of years follows the purchase of the fee; or, to use the words

Ancient rule
of law.

(*a*) There are decisions on record relative to fixtures as early as the reigns of Edward III. and Henry VII., but they possess none of the subtle and distinctive nicety of the modern cases usually referred to.

of the maxim itself, "*quicquid plantatur solo solo cedit.*" Thus in the outset of the question the thing annexed at once lost its character as personal property of the tenant, and became part and parcel of the real estate and inheritance of the freeholder.

Early invasion of it.

Now this rule has never been abrogated; but is, in fact, the law at this day (*b*); subject, however, to exceptions so numerous and important, as to have left to the original maxim little more than its anti-quity. In practice, the owner of the estate rarely, if ever, secures the advantages which this rule was intended to confer upon him—the "general principle is maintained only as a root, from which continual exceptions may spring;" and, as several learned writers have well remarked (*c*), so may we repeat, that it is a reflection upon the jurisprudence of the country, that a rule of law, originating in the feudal policy of a remote age, and productive of serious inconvenience to the public, should still be retained, while its mischievous consequences are only partially and imperfectly corrected by numerous subtle and intricate distinctions introduced by the Courts from time to time with that view. Even to the present day, the law on the subject of fixtures is unsettled. Each individual case is decided on its own particular merits, and with reference to the peculiar legal character of the litigants. Thus one rule is adopted as between heir and executor, another as between the personal representative of the tenant for life or in tail, and the remainder-man or reversioner; whilst as between landlord and tenant the greatest indulgence is shown to the latter in relaxation of the ancient maxim.

Present unsettled state of the law.

Its distinctions between different classes of persons.

Effect of the ancient maxim.

The direct consequence of the ancient maxim of law to which we have alluded, was that an action for waste would lie against any one who removed any fixture so annexed; such removal being regarded as

(*b*) See judgt. of Parke, B., in *Mackintosh v. Trotter*, 3 M. & W. 184; also *Marshall v. Lloyd*, 2 M. & W. 450.

(*c*) See Amos & F. on Fixtures, Introd. 25; and Woodfall's Landlord and Tenant, by Wollaston, p. 447, 5th edit.

a damage done to the freehold inheritance. But with the rapid advance of trade and manufactures, expediency, increasing the favour and indulgence shown to them from very early times by courts of justice, soon led to extensive invasions of the rule, and to the establishment of numerous precedents for exceptions and limitations. The increase of commerce and wealth moreover gave a value to personal property which was unknown before, and established a claim to some share of that protection which had previously been accorded exclusively to real estate. Hence, step by step, arose the present modification of strict doctrine and practice respecting fixtures—commencing with the limited recognition of their substantive personalty as distinct from the freehold—and ending in making the ancient rule the modern exception, and establishing as a principle the rights of ownership in them, and consequently, the exercise of its privileges in the right of severance, or of sale.

It would be beside our purpose to inquire *seriatim* into the various ways in which the law of fixtures operates in case of severance, as to how far the thing annexed remains personalty after annexation; or, whether it for the time becomes realty, subject, however, to be again reduced to its personal condition on severance. It may suffice to observe that, for some purposes, the law regards a fixture as personalty, and for others it treats it as part of the freehold. As an instance of the former, the seizure of fixtures under a *fiery facias* may be mentioned; and of the latter, the fact that, until after severance, an action of trover will not lie to recover them. But it must be observed, that these distinctions are neither wanton nor absolute, but arising out of rules of law, which it were out of place here to discuss.

It must be borne in mind, that the right of tenants to sever and remove chattels affixed to the freehold, as explained in this Treatise, is to be understood as applying only to cases where there is no specific agreement between the landlord and the tenant on the subject. The terms of any definite

General rule as to fixtures only applies where there is no special agreement.

Other considerations which affect the right to remove fixtures.

arrangement, or special contract on the subject, will, of course, preclude all dispute as to the general law of fixtures; and the rights and liabilities of the respective parties must in such a case be determined according to the strict literal terms of their agreement.

Whilst it must be admitted that the invasions of the ancient law, respecting annexations to the freehold, had their origin, as already remarked, in the favour shown to trade and manufacture by courts of justice, and the desire to afford increased protection to personal property; yet it must not be supposed that this indulgence was granted from these considerations alone. On the contrary, the limitations and exceptions subsequently established, have themselves been modified by the circumstances of each individual case, and by some principles apparently laid down, but of which it is not always easy to discover the right application. Thus where a fixture has been annexed to the estate confessedly for the purposes of trade, or to facilitate the processes of some manufacture, the right of removal has not been affirmed absolutely on that account, but with a reference to other considerations; such as the existence of some local custom (*d*), with regard to the removal of such a fixture (*e*); the amount of injury occasioned to the freehold by its removal (*f*); the perfectly personal nature of the article before its annexation; and its comparative value to the respective claimants. And on looking back to the early and leading cases on the subject, it will be found that, both in the arguments and in the judgments, these principles were more or less relied upon, and were never entirely

(*d*) *Culling v. Tuffnal*, Bul. N. P. 34; *Lawton v. Salmon*, 3 Atk. in notis; *Wetherell v. Howells*, 1 Camp. N. P. C. 227; *Davis v. Jones*, 2 B. & Ald. 165; and *Trappes v. Harter*, 3 Tyr. 603.

(*e*) *Buckland v. Butterfield*, 2 B. & B. 54.

(*f*) In *Lawton v. Lawton*, Lord Hardwicke said, that it was a very true maxim in the doctrine of fixtures, that the principal thing shall not be destroyed in taking away the accessory; and see *Avery v. Cheslyn*, 3 Ad. & E. 75.

overlooked, even where the decision ultimately turned on other points.

Thus, then, a consideration of the ancient rule of law, as affected by the lapse of time and the influence of circumstances, has enabled us to arrive at our third and final meaning of the word, viz. its “LEGAL” or real sense. This, as we have here endeavoured to show, owes its origin to the rival interests of the tenants’ or “colloquial” reading, and the landlords’ or “supposititious” reading; and from a modification of the several claims of these two contending parties, the word has in course of time assumed its present limited, defined, and LEGAL sense.

In this legal definition,—which it is our intention to adopt throughout the present treatise, we hold

Definition of
the word Fix-
ture as em-
ployed
throughout
the present
Treatise.

FIXTURES TO BE THOSE PERSONALTIES, WHICH,
BEING NEITHER CHATTELS NOR FURNITURE, HAVE
BEEN ANNEXED TO THE FREEHOLD BY SOME PARTY
NOT POSSESSED IN FEE.

CHAPTER II.

OF THE RIGHT TO REMOVE FIXTURES AS MODIFIED
BY THEIR NATURE AND PURPOSES.

HAVING thus limited and defined the word Fixture, in the view which we have, after due consideration, adopted, it may be as well before proceeding to treat of its various classes in subdivision, to explain what kind and degree of annexation to the freehold is necessary to take away the character of furniture, or chattel, and constitute that of fixture.

What constitutes a fixture.

Not merely resting upon the freehold.

Nor upon brickwork affixed to the soil.

For this purpose, it appears that mere contiguity or juxtaposition will not suffice. Anything brought and laid upon the lands, or in or upon any building affixed to the land, does not thereby become a fixture, there being in such a case no annexation to the freehold, but a mere contact with it (*a*). Thus a barn (*b*) built upon battens, or blocks of wood lying upon the ground, but not fixed in or to the ground, is not a fixture. So also if goods or buildings are merely *placed*, and *rest upon, without being let into* a brick or other foundation, and can be removed without injury to the brickwork, they remain chattels, although the foundation be affixed to the soil as part of the freehold, and cannot be severed, and although it was constructed for the express purpose of sustaining such buildings, or other articles (*c*). Thus, where certain vats on the premises of a distiller were supported by and rested upon brickwork and timber, and certain other vats stood on horses, or frames of wood, which were not let into the ground, but stood upon the floor, the Court held that they passed, under the Bankrupt Act, 21 Jas. I, c. 19, to the assignees, as

(*a*) *Hollen v. Runden*, 1 C. M. & R. 276.

(*b*) *Elwes v. Maw*, 3 East, 38, and case cited from Buller's N. P. 34.

(*c*) *Horn v. Baker*, 9 East, 215.

goods and chattels, in the disposition of the bankrupt; and that they were, in this respect, distinguishable from stills set in brickwork and let into the ground, which must be considered as part of the freehold (*d*). So a varnish house built on a wooden plate, lying on brickwork;—a windmill raised upon posts; (*e*)—a stable (*f*) and windmill supported on rollers, and the like, are instances of imperfect annexation to the soil, and are not, therefore, to be classed among fixtures.

But perhaps the strongest instance in elucidation of this principle is to be found in a more recent decision (*g*). Certain pieces of machinery called jibs, (*h*) were placed in caps or steps of timber fixed into a building, and were the uprights which turned round the work in the caps and steps. These jibs were fastened by pins above and below, and might be taken out of the caps or steps without injuring them or the building, but not without being, to some extent, injured themselves. The Court of King's Bench were of opinion, that these jibs, from their mode of construction, were not properly fixtures at all, but mere personal chattels. So (*i*) machinery fixed to the floor of a building by bolts and screws, which may be removed and replaced without injury to the building or the machinery, the bolts and screws being only employed to secure the stability necessary for the working of the machinery, such machinery is not a fixture, but a chattel. So (*k*) windows not hung nor beaded into frames, but kept in their places by laths nailed across, are chattels only.

Nor even such parts of a machine fixed to the freehold as are but slightly attached, and may easily be separated without injury.

This case brings us to a consideration of the subject of fixtures altogether novel in its application, although its influence has been silently and imper-

Application of the details of the building trade to the definition of fixtures.

(*d*) *Penton v. Robart*, 2 East, 88.

(*e*) *Rex v. Inhab. of Londonthorpe*, 6 T. R. 377.

(*f*) 1 Hen. Blackst. 259.

(*g*) *Davis v. Jones*, 2 B. & Ald. 165.

(*h*) For a definition of "jibs," see the Glossary of Technical Terms.

(*i*) *Duck v. Braddyl*, M'Clel. 217, and 13 Price, 455.

(*k*) *Rex v. Hedges*, 1 Leach, 201.

ceptibly acknowledged in all the decisions hitherto recorded. This consists in looking to the building trade for the strict definition of those nice distinctions with which this law abounds; and in the subdivisions of this trade we shall find a true interpretation of its difficult phrases.

The early builders were all either masons, sculptors, bricklayers, or carpenters: with them more delicate work was overlooked; stucco and paint furnished their interior decorations, and the useful medium of glass was altogether unknown.

First purpose of the screw.

The fame of Archimedes rests principally on the invention of the screw; but this, at the time of its invention was looked upon solely as an instrument of enormous power, and a means of multiplying force.

Adaptation of its use.

But our modern system of construction engrafted on the trade of carpentry a more delicate and careful system of work in joinery; and as the nails of the carpenter were found not only to tear the adjacent work in their removal, but also to shake it with the heavy blows of the hammer, the screw was adopted as the means of rendering work easy alike of annexation and removal, with but little waste or damage.

Application of the distinction between nails and screws to the definition of fixtures.

By this distinction of nails and screws we draw our line of fixtures. The nail is invariably used by the builder where firm and lasting work only is required; the screw in every case where future alteration may be needed, or where neatness is a desideratum. No screws are ever used in the essential portions of a house, as joists, partitions, wall plates, door or window-frames, floors, or roof timbers; whilst on the other hand, nails are not used for fixing bells, baize doors, chimney backs, hat rails, cornices, stoves, or any of those personalties which are generally so considered. In short, the Courts would seem tacitly to have adopted the builder's distinction, more especially in those cases which affect domestic and trade fixtures, inasmuch as they have declared a difference to exist between wainscot fastened with screws, and wainscot otherwise fast-

ened (*l*)—and between cornices so fastened, and cornices otherwise fastened. Although in this latter case we are inclined to think that the distinction (somewhat indistinctly reported) was intended rather to draw a line between exterior and interior cornices; or those altogether ornamental, and those which form a component part of the building (*m*). Again, it was held that a cupboard nailed to stand-fasts let into the floor was affixed to the freehold, and therefore irremovable (*n*); whereas it is well known that such cupboards fastened with screws are removed daily.

This view is fully adopted by the rule laid down by the learned authors before cited (*o*);—"That things which a tenant has fixed to the freehold for the purposes of trade or manufacture, may be taken away by him, wherever the removal is not contrary to any prevailing practice; where the articles can be removed without causing material injury to the estate; and where, in themselves, they were of a perfect chattel nature before they were put up; at least have in substance that character independently of their union with the soil: or, in other words, where they may be removed without being entirely demolished, or losing their essential character or value." It is not, however, necessary that all these conditions should be fulfilled, in order to justify the removal of a trade fixture; perhaps, indeed, the indulgence of the Court might be extended to the tenant where not even one of them was complied with. But in cases where the above circumstances do concur, it may be laid down with confidence that the right of removal would be confirmed. The favour shown to trade and manufacture, in the power given to sever and remove what has been affixed to the freehold for those purposes, would probably extend to every case where

(*l*) *Elwes v. Maw*, 3 East, 38.

(*m*) *Avery v. Cheslyn*, 3 A. & E. 75.

(*n*) *The King v. The Inhabitants of St. Dunstan's*, 4 B. & C. 686.

(*o*) *Amos & F. on Fixtures*, pp. 43, 44.

the fixture could be removed without great and serious injury to the substance of the estate ; and where it could not, common sense and justice seem to require that the ancient rule should be allowed to prevail, and the chattel affixed be held to have become part of the inheritance, and therefore to be irremovable.

Instances of
constructive
annexation.

There are, however, certain cases of *constructive annexation*, in which the articles, though in themselves chattels, and not literally affixed to the freehold, are yet so intimately connected with it, and so essential to the enjoyment of it, that the law regards them as part and parcel of the realty. Of this kind are keys, rings, &c. (*p*) ; and a mill-stone, though removed from the mill to be picked, that it might grind the better (*q*). So the title-deeds and charters of an estate are attendant on the inheritance : and the deer and fish in a park or fish-pond pass with the estate (*r*).

Heir-looms.

Under this head heir-looms may be classed, being chattels which, although ordinarily they would pass, with other personal property of the deceased proprietor, to his personal representatives, yet, by particular custom, descend to the heir, along with, and as members of the inheritance (*s*). Of these and similar adjuncts of the inheritance, however, it is not our object to treat, but to confine ourselves specifically to that description of personal property, which, on annexation to the freehold, falls within the legal definition of " fixtures." The doctrine of constructive annexation may nevertheless help to explain the decision of the Court in *Sheen v. Rickie* (*t*), that after verdict it should not be inferred that " fixtures " must necessarily mean things affixed to the freehold.

Having thus limited and defined the constitution

(*p*) *Lifford's* case, 11 Co. 50.

(*q*) *Ib.*

(*r*) 14 Vin. Abr. 290.

(*s*) *Ib.*

(*t*) 5 M. & W. 175.

of fixtures, we may now proceed to consider them as modified by their particular nature or purpose; and this portion of our subject may be best subdivided into the four heads of—1. Trade; 2. Agricultural; 3. Domestic; and 4. Mixed. Each of which subjects we will proceed to consider in detail, having first briefly set forth their distinctive characters.

1. *Trade* fixtures are those which have been ^{Trade fixtures.} affixed to the estate by the tenant, for the purpose of carrying on his trade or manufacture. Of this kind is every species of machine or apparatus, essential or convenient to the tenant in his business, and which he annexes to the freehold for the purpose of carrying on his occupation—as brewing vessels and pipes, vats, stills, cisterns, coppers, fire-engines, furnaces, counters, closets, machinery, presses, pumps, reservoirs, and an innumerable multitude of other articles, without which the endless variety of manufacturing processes could not be carried on.

2. *Agricultural* fixtures are those erected for the ^{Agricultural.} more convenient carrying on of husbandry, such as barns, beast-houses, foldyards, cart and waggon-houses, fuel-houses, and many others.

3. Under the head of *domestic* may be classed ^{Domestic.} those internal fixtures and fittings, the object of which is the comfort and convenience of the tenant; and these are either of a directly useful kind, as bells, blinds, bookcases, shelves, stoves, ovens, coppers, cisterns, &c.; or are put up with a view to refinement and elegance, and are merely decorative, as marble chimney-pieces, ornamental cornices and hangings, cabinets, pier-glasses, marble slabs, clock-cases, &c.; many of which may more properly be described as fixed furniture than fixtures; a distinction, as we shall afterwards see, which is sometimes of importance.

4. Beside the above, there are certain other ^{Mixed.} fixtures, which partly subserve the purposes of trade, and partly the enjoyment of the real estate and of the profits of the land. Of this kind are fire-engines

in collieries (*u*), and cider-mills (*x*), and salt-pans (*y*). Each of these is a mixed case between enjoyment of *the profits of land*, and carrying on of a *species of trade*.

From this brief general view of the nature and different classes of fixtures, we proceed to a consideration of the rights and remedies which the law confers on the several owners of them ; and to those other topics of a practical nature of which it is our purpose to treat.

SECT. I.—*Trade Fixtures.*

THE privilege of severing and removing such annexations to the freehold as were made for the purposes of trade and manufacture, was not only among the earliest which were granted on this subject, but it is the best established, the most definite, and the most extensive. To pass by the earlier and more doubtful cases, this privilege was clearly and distinctly recognized by Holt, C. J., in *Poole's case* (*z*); and, by a long series of subsequent decisions, it has been amply and authoritatively confirmed.

Poole's case.

Poole's case was that of a soap-boiler, an under-tenant, who, for the convenience of his trade, had put up vats, coppers, tables, partitions, and laid down paving, &c. ; all which things had been taken under an execution against him ; on which account the first lessee brought an action against the sheriff for the damage done to the house, and which he was liable to make good. Lord Holt, C. J., held, that, during the term the soap-boiler might well remove the vats he set up in relation to trade ; and he said

(*u*) *Stuart v. Earl of Bute*, 3 Ves. 212, and 11 Ves. 657.

(*x*) *Lord Dudley v. Lord Ward*, Amb. 114.

(*y*) 3 Atk. 14.

(*z*) 1 Salk. 368.

that he might do it by the common law (and not by virtue of any special custom) in favour of trade, and to encourage industry.

After this decision, the right of the tenant to re-
move trade fixtures, may be considered to have been fully established. But moreover, the principle on which that right is founded, was then clearly expounded, and has ever since been admitted and acted upon in similar cases. The motive which operated on the minds of the Judges in relaxing the strictness of the ancient rules of law, and admitting innovation, was a consideration of the public good. The object was the advancement of the commercial prosperity of the country, and the "support of the interests of trade, which had become the pillar of the state" (*a*), by encouraging tenants to employ their capital in making improvements for the purpose of carrying on their business or manufacture, with the certainty of securing the benefit of their outlay at the end of their respective terms.

Principle on which trade fixtures are removable.

The extent to which this privilege has been carried is, however, of the greatest practical importance, and can only be determined by a rapid review of the most important cases on the subject.

And first, as to machinery erected for the purposes of trade.

In *Lawton v. Lawton* (*b*), it was determined that a *fire-engine* or *steam-engine* erected by a tenant for life, should at his death go to his executor, as part of his personal assets.

Lord Dudley v. Lord Ward (*c*) was also a case of a *fire-engine* to work a colliery, erected by a tenant for life, and was also decided in favour of such tenant. But where a lessee (*d*) of a mill and steam-engine, who had covenanted to repair, reasonable wear and

(*a*) *Judgment of Lord Kenyon in Penton v. Robart*, 2 East, 90.

(*b*) 3 Atk. 13.

(*c*) Amb. 113.

(*d*) *Sunderland v. Newton*, 3 Sim. 450.

tear excepted, added, during the term, both to the height and extent of the mill, and removed all the works of the engine except the fly-wheel, fly-wheel shaft, and boiler, and attached to them a new engine of greater power, an injunction was granted to restrain the assignees of the lessee, who had become bankrupt, from removing the parts of the new building and the new parts of the engine, subject to an action to be brought by the lessors to try the right. Here the tenant had substituted one engine for another, and also made a permanent and substantial addition to the freehold, in the shape of an enlargement of the mill; and, even in the absence of the covenant to repair, it seems clear that he would not have been entitled to sever these improvements, as fixtures which he might claim at the end of the term. The addition to the mill was, in no sense, accessory to any thing of a personal nature; it was not a perfect chattel before annexation, nor could it have been removed without materially injuring the freehold, and making the severed materials almost worthless to the lessee; although, while they remained affixed, they were of very considerable value to the owner of the estate. On all these grounds it is probable that under no circumstances would the tenant have been entitled to treat these alterations and improvements as fixtures.

In *Trappes v. Harter* (e) various machines from time to time erected on the premises for the purpose of extending the works, and which were firmly affixed to the freehold, in such a manner, however, that they might easily be removed without material injury to themselves or to the buildings, were held not to be part of the inheritance, but personal estate.

As the result of these authorities, it may be inferred generally, that all engines and other machinery put up by the tenant, at his own expense, for trading or manufacturing purposes, and removable without se-

rious injury to the freehold, or the destruction of the articles themselves, may be removed by him at the end of his term.

In the case of *Lawton v. Lawton*, above quoted, Lord Hardwicke in his judgment alludes to *coppers* and all sorts of brewing vessels and pipes, laid for the convenience of trade, as removable by the tenant. Furnaces,
vats, coppers,
and utensils
of trade.

And in *Poole's* case, as we have seen, the vats, tables, &c., of a soap-boiler were held to be fixtures. So a tenant may lawfully remove salt-pans (*f*), or a pump slightly affixed (*g*), or the plant of a brewer or distiller, &c., together with cisterns, tanks, and reservoirs, erected in manufactories for the convenience of trade (*h*).

So the tenant may sever all counters, closets, desks, drawers, shelves, partitions, glass-fronts, gas-pipes and burners, and shop-fittings generally, whether they fall under the head of fixtures properly so called, or may be more accurately described as fixed furniture—as iron safes and chests, cranes and presses, &c. (*i*). Shop and
warehouse
fittings, &c.

The privilege of the tenant extends also to *buildings* erected for some purposes of trade, and in such cases little or no notice has been taken of the mode of construction. Thus in *Dean v. Allaley* (*k*), Dutch barns, which were “sheds having a foundation of brickwork in the ground, and uprights fixed in and rising from the brickwork, and supporting the roof, which was composed of tiles, and the sides open;” were held removable. So a varnish-house, constructed of wood on a brick foundation, and with a chimney, “was held to be a trade fixture” (*l*). Generally, too, all buildings which are but accessories to fixtures, or things of a personal nature, as sheds Buildings,
&c.

(*f*) *Lawton v. Salmon*, 1 H. Bl. 259, *in notis*; S. C. 3 Atk. 16, *in notis*.

(*g*) *Grymes v. Boweren*, 6 Bing. 437.

(*h*) *Amos & F. on Fixtures*, 276, a.

(*i*) *Ibid.*

(*k*) 3 Esp. 11.

(*l*) *Penton v. Robart*, 2 East, 88.

erected to inclose machinery, engine-houses, &c. are equally removable with the things to which they are incident (*m*).

Lime-kilns.

In the case of *Thresher v. East London Waterworks Company*, as to the right of removal of a lime-kiln, built of brick, and let into the ground, the language of the judgment implies that it is doubtful if such a building be removable at all. In a case, however, laid before Sir John Richardson, when at the bar, he advised that kilns and sheds built of brick, and used in the manufacture of bricks and tiles from the earth of the land demised, might be removed by the tenant who had erected them. And the landlord did not dispute the right.

SECT. II.—*Agricultural Fixtures.*

Distinction
between *agri-*
cultural and
other
tenants.

WITHOUT sufficient reason, distinctions have been drawn between fixtures put up for the purposes of trade or manufacture, and those erected for the convenience of husbandry. Whilst the tenant's right of removal in respect of the former has been well established and liberally construed, in regard to the latter no indulgence has been shown to tenant-farmers, who are considered to have relinquished their property in any chattel which they may have affixed to the freehold for agricultural purposes; so that it becomes a part of the inheritance, and passes to the reversioner at the end of the term. It is to be lamented that this injustice should be perpetuated, on the ground of nice refinements and distinctions between the business of agriculture and other trades and occupations; and, notwithstanding the arguments of a learned writer (*n*), it seems clear that in the leading case of *Elwes v. Maw*, Lord Ellenborough has con-

(*m*) *Elwes v. Maw*, 3 East, 38.

(*n*) Gibbon's Manual of the Law of Fixtures, pp. 27, 28.

finer “ the privilege of the tenant within narrower limits than are designated by the policy to which it owes its existence ; because there seems no good reason for conferring it on trade to the exclusion of husbandry,—a pursuit equally advantageous to the community, and which is now, like manufactures, often carried on by the aid of valuable machinery” (o). Besides it is clear that many of the operations of the agriculturist are *trades*, if that word be understood not in a restricted and technical, but in the extended sense in which Lord Hardwicke seems to have used it in the cases of *Lawton v. Lawton* (p), and *Dudley v. Ward* (q), where “ he appears to have considered the privilege in question as belonging to fixtures, by means of which the owner carried on a *species of trade*, by which he rendered the produce of his own land available to his own profit.”

In *Elwes v. Maw*, however, it was decided that an agricultural tenant, who erected at his own expense, and for the mere necessary and convenient occupation of his farm, a beast-house, carpenter’s shop, fuel-house, cart-house, pump-house, and fold-yard wall, which buildings were of brick and mortar, and tiled, and let into the ground, cannot remove the same, though, during his term, and though he thereby left the premises in the same state as when he entered. There appears to be a distinction between annexations of that nature to the freehold for the purposes of trade, and those made for the purposes of agriculture, and better enjoying the immediate profits of the land, in favour of the tenant’s right to remove the former : that is, when the superincumbent building is erected as a mere accessory to a personal chattel, as an engine ; but where it is accessory to the realty, it can in no case be removed.

The case of the Dutch barns mentioned in the last chapter (r) would, perhaps, fall more properly under

(o) Smith’s Leading Cases, 1, 116.

(p) 3 Atk. 13.

(q) Amb. 113.

(r) See page 193.

this head, but Lord Kenyon treated those buildings as fixtures put up for the purposes of *trade*.

In *Fitzherbert v. Shaw* (s), Mr. Justice Gould was of opinion that a tenant would be entitled to remove *sheds built on brickwork*, and *posts and rails* which he had erected. But the case of *Elwes v. Maw*, being subsequent to this, and to *Dean v. Allaley*, they can be reckoned as of little authority. Lord Ellenborough's elaborate judgment must be considered as having settled the law and the practice on this subject ; and accordingly it must be understood, that *agricultural* tenants are excluded from any participation in the advantages possessed by tenants in trade (t).

SECT. III.—*Domestic Fixtures.*

Principle on which these fixtures are removable.

THE principle on which a tenant is allowed to sever and remove chattels which he has affixed to the realty for his own personal convenience and accommodation, and without any reference to trade or manufacture, is, "that, as annexations of this nature must generally be designed for temporary purposes only, it would greatly incommode tenants in the enjoyment of their estates, if by every slight attachment to the freehold, the property should immediately be changed and pass over to the reversioner" (u). Domestic fixtures may be divided into two classes, those of a directly *useful* description, and those which are put up for *ornament*. Of course there are numerous articles which belong partly to one class and partly to another ; namely, those which, subserving a useful purpose, are also decorative—as marble chimney-

(s) 1. H. Bl. 258.

(t) Amos & F. on Fixtures, p. 53.

(u) Amos & F. p. 77.

pieces, ornamental grates, &c. A very nice accuracy in discriminating between these classes of fixtures is necessary in the practice of inventory taking, &c., since it is quite impossible to lay down any general rule applicable to every variety of circumstances.

First, as to fixtures put up for the purposes of utility. The earliest authority on this subject is *Squier v. Mayer* (x), where Lord Holt decided, as between the heir and the executor of the deceased owner (in which case the privilege is more limited than between landlord and tenant), that a *furnace*, though fixed to the freehold and purchased with the house, and also *hangings* nailed to the walls, are personality, and may be severed.

Fixtures for convenience. Held removable.

Furnaces and hangings.

So in *Harvey v. Harvey* (y), it was held that *hangings, tapestry, and iron backs to chimneys*, were removable. In his judgment, in the case of *Lawton v. Lawton* (z), Lord Hardwicke observes, that *wainscot fixed only by screws, and marble chimney-pieces*, may be removed.

Tapestry and iron chimney-backs.

Wainscot fixed with screws, and marble chimney-pieces.

So also in the case of *stoves and grates* fixed into the chimney with brickwork, and cupboards supported by holdfasts (a).

Stoves, grates, and cupboards.

So also stoves, cooling-coppers, mash-tubs, water-tubs, and blinds (b); set-pots, ovens, and ranges (c), coffee-mills, and iron malt-mills, &c. (d).

It should be observed, that many or most of these articles may, in ordinary cases, remain mere chattels, not being affixed to the realty at all, or else so slightly as not to be accounted fixtures. It is only when they are actually annexed to the freehold, that any question as to their removal can arise. The difference, also, between fixtures, properly so called, and

(x) 2 Freeman, 249.

(y) Strange, 1141.

(z) 3 Atk. 15.

(a) *Rex v. St. Dunstan*, 4 B. & C. 686; and see *Lee v. Risdon*, 7 Taun. 191.

(b) *Colegrave v. Dias Santos*, 2 B. & C. 77.

(c) *Winn v. Ingleby*, 5 B. & Ald. 625.

(d) *Rex v. Londonthorpe*, 6 T. R. 377.

fixed furniture, becomes material under certain circumstances, to be noticed hereafter, in determining the legal incidents of the articles in question.

Pump. In the case of *Grymes v. Boweren* (e), the tenant was allowed to remove a *pump*, which was attached to a stout perpendicular plank resting on the ground at one end, at the other fastened to the wall by an iron pin, which had a head at one end and a screw at the other, and went completely through the wall; the article, said Tindal, C. J., “was one of *domestic convenience*, was slightly fixed, erected by the tenant, and might be removed entire.”

Not removable. Although the tenant may remove an ornamental chimney-piece put up by himself, yet he may not remove one which is not ornamental, nor can he take away pillars of brick and mortar built on a dairy floor to hold pans, although such pillars are not let into the ground (f).

Pineries, conservatories, and green-houses. On the subject now under consideration the case of *Buckland v. Butterfield* (g) is a leading authority. The defendant had removed a *conservatory* and *pinery*. The conservatory had been purchased by the tenant and brought from a distance, and by him erected on a brick foundation fifteen inches deep, upon which was a sill. From the sill rose a wooden frame-work eight or nine feet high at the end, and two feet in front, covered with slate. This conservatory was attached to the house by eight cantilivers, let nine inches into the wall, upon which the rafters were supported. Upon these cantilivers there rested a balcony with a railing. The conservatory was constructed with sliding glasses, paved with Portland stone, and connected with the parlour chimney by a flue. Two windows of the house were opened into the conservatory, and a folding door into the balcony, so that when the conservatory was pulled down, that side of the house to which it had been attached

(e) 6 Bing. 437.

(f) *Leach v. Thomas*, 7 C. & P. 328.

(g) 2 Brod. & Bing. 54.

became exposed to the weather. The pinery was erected in the garden on a brick wall four feet high. Held by the Court, that the buildings were not removable.

So a *verandah* supported upon posts fixed into the Verandahs. ground was, in one instance, held not removable; but this authority is of little weight on the general question, as the decision turned rather on the meaning of a covenant in the tenant's lease, than on the application of the rule as to such annexations to the realty (*h*).

Secondly, as to *ornamental* fixtures.

Many of the articles enumerated under this head, and alluded to in the cases which have been decided on the subject, were nothing else but chattels. There Ornamental fixtures. was no sufficient annexation to the realty to deprive them of that character, or to bring them within the operation of the rule regarding fixtures. Thus, pier-glasses, hangings, beds fastened to the ceiling or walls, carpets tacked to the floor, pictures, book-cases, console tables screwed to the wall, and many things of the like kind, are, strictly speaking, *furniture*, and not fixtures.

There are, however, certain articles in a more decided manner affixed to the realty, and which have been so affixed rather with a view to elegance than utility. Of this kind are *cornices*. Where a cornice Cornices. was fixed with *screws* only, was put up for ornament, and could be removed without any substantial injury to the freehold, it was held removable by the tenant (*i*).

So also the gilt or other moulding round the papering in a room, may be removed; provided, that the Gilt or other moulding. edges of the papering be finished off fair, and that the moulding be added solely for the purposes of ornament.

Picture rods may also be removed if independent Picture rods.

(*h*) *Penry v. Brown*, 2 Stark. N. P. C. 403.

(*i*) *Avery v. Cheslyn*, 5 Nev. & M. 372, and 3 Ad. & E.

of the walls ; but it is the custom now frequently to form picture rods by means of the lower member of the cornice. These, which cannot be removed without damaging the cornice, must therefore be left.

Wainscot.

Lord Hardwicke mentions *wainscot fixed only with screws (k)* as removable, but on what authority does not appear. In a subsequent case, he expresses an opinion that if *fixed otherwise than with screws* it might still be severed, though he thinks it a strong instance. What kind of wainscot is alluded to in these cases it is not easy to determine, but it is very doubtful if such wainscot as is now ordinarily fixed in dwelling-houses could be removed, inasmuch as the removal must materially injure and disfigure the house, whilst the tenant would be comparatively but little benefited. Much would, of course, depend on the particular circumstances of the case, and how far they might be affected by any principles and conditions to be hereafter mentioned. It is, however, most probable that it would be now considered a substantial addition to the freehold, and therefore not severable at the end of the term.

Hearths, doors, and windows, and all buildings such as washhouses, stables, &c., are generally irremovable, even although they may have been added by the tenant.

Shrubs, &c.

By the same rule flowers and shrubs are irremovable ; also a border of box in a garden (*l*), hedges, fruit-trees (*m*), strawberry-beds (*n*), &c.

Circumstances to be considered in determining right of removal.

In general, in determining whether any of the articles affixed to the freehold by the tenant for the purposes of convenience or ornament, are removable or not, the circumstances to be taken into consideration are ; First, the *mode of annexation* of an article, and the extent to which it is united to the premises. Secondly, its *nature* and *construction*, and the object

(k) *Lawton v. Lawton*, 3 Atk. 15.

(l) *Empson v. Soden*, 4 B. & Ad. 655.

(m) *Windham v. Way*, 4 Taun. 316.

(n) *Wetherell v. Howells*, 1 Camp. 227.

of annexing it, whether for a *temporary* purpose, or as a *substantial* and *permanent* addition to the estate. Thirdly, the *effect* of its *removal* upon the estate of the reversioner; and *lastly*, whether there be any *custom* or prevailing usage regarding the articles in question, such as that of valuation to in-coming tenants, &c. (o).

If, then, the article be but slightly affixed to the freehold; if it has been added by the tenant to increase his own comfort or convenience, and is specially adapted for that purpose; if it is easily severable without materially injuring the substance of the estate, and when severed is of value and importance to the tenant, leaving the house or other property to which it was affixed, as it was before the annexation; and, finally, if it is the practice of the particular neighbourhood to value such an article between out-going and in-coming tenants; then it may safely be removed at the end of the term. If, on the other hand, it is so closely and intimately affixed to the realty as to make its severance a matter of great difficulty, or if it is in the nature of a permanent addition to the freehold, or if the estate of the reversioner would be seriously injured by its removal whilst the article itself would be of little value to the tenant, and if, moreover, there exists no custom by which its severance may be justified; then it may be considered as part of the inheritance, the removal of which would be waste, and for which the party entitled in reversion might recover a compensation in damages.

In the first of these cases the tenant's privilege of removal is not only allowed, but is self-evident; in the other, the ancient rule of law prevails, in the absence of those special circumstances and considerations on which alone the exceptions have been introduced and justified.

(o) Amos & F. pp. 84, 85.

SECT. IV.—*Fixtures put up for mixed purposes.*

THERE remains one other class of fixtures which may be removed by the tenant, and of which it is necessary to say a few words. This class comprehends such articles as are annexed to the realty with a twofold object, either for the mixed purposes of trade and enjoyment of the profits of the land; or of trade and domestic convenience.

Fixtures put
up for trade
combined
with other
objects.

Under this head may be classed the steam-engines put up for the working of a colliery (*p*), the cider-mills on a farm (*q*), and the salt-pans affixed to the realty by the owner in fee (*r*). Many other instances may be easily imagined, in which certain chattels might be affixed to the freehold, partly for the purposes of trade and partly for other purposes.

Instances
where held
removable.

Steam-
engines.

Cider-mills.

As to the right of removal in such cases, we have already seen (*s*), that Lord Hardwicke held steam-engines removable; and Chief Baron Comyns decided in a similar manner with regard to the cider-mills. The making of cider, and the digging of coal, were considered in the light of trades; and for the sake of the public benefit, therefore, the severance of these articles was allowed.

Salt-pans.

In the case of the salt-pans, however, where the question arose between the executor and the heir, Lord Mansfield held them not removable; though he intimated, that as between landlord and tenant, the case might have been different, as it would then have been for the encouragement and convenience of trade, to allow the tenant to sever and remove them.

In determining whether it would be right for a tenant to remove any instrument or utensil, set up for mixed purposes, in the absence of any express authority or established precedent, it must be

(*p*) *Lawton v. Lawton*, 3 Atk. 13, and *Lord Dudley v. Lord Ward*, Amb. 113.

(*q*) 3 Atk. 14.

(*r*) *Lawton v. Salmon*, 1 H. Bl. 260, *in notis*.

(*s*) *Lawton v. Lawton*, *supra*.

borne in mind, that the privilege of removal is always more liberally construed in favour of the tenant, as between himself and the landlord, than it is in the case of heir and executor; or of tenant for life or in tail, and remainder-man or reversioner.

There is one other class of annexations to the realty, which deserves some attention; namely, those frequently affixed by nurserymen and gardeners, for the purposes of their occupation. Fixtures put up by nurserymen and gardeners.

These parties are allowed to remove trees and shrubs, in the course of their trade, and, generally, the produce of their grounds cultivated expressly for the purposes of sale (*t*). The very object of the tenant's holding would be defeated if this exception were not established in his favour. Trees, &c, removable.

He must not, however, plough up strawberry-beds in full bearing, even although he may have purchased them of a preceding tenant, and although it is the general practice to value these plants as between out-going and in-coming tenants (*u*). But in the case here cited, the act was done maliciously, and not in the ordinary course of trade. Strawberry-beds.

A private individual cannot remove fruit-trees, planted for other purposes than those of sale (*x*).

As to the right of a nurseryman or gardener to remove green-houses, conservatories, hot-houses, pineries, and erections of that description, which he has set up for the convenience of his trade, Lord Kenyon expressed a decided opinion in the case of *Penton v. Robart* (*y*), that he might sever and remove them, at the end of his term. In the subsequent case of *Elwes v. Maw* (*z*), Lord Ellenborough disapproved of this doctrine. And in the course of the argument in *Buckland v. Butterfield* (*a*), a Greenhouses, conservatories, &c.

(*t*) 2 East, 91; 7 Taun. 191.

(*u*) *Wyndham v. Way*, 4 Taun. 316.

(*x*) *Ib.* per Heath, J.

(*y*) 2 East, 91.

(*z*) 3 East, 56.

(*a*) 2 B. & B. 58.

manuscript case was cited, in which it had been held, that glasses and frames resting on brick-work, in a nursery-ground, were not removable.

Such fixtures
generally re-
movable.

There is indeed no authentic precedent, nor any reported case, in which the question as to these articles has been expressly decided: but from a comparison of the circumstantial details of the few cases on the books, and a test of their comparative merits by analogy, the broad principle already laid down, must be adhered to; viz., that all such frames must be held to be removable when only *resting on the brick-work*, but irremovable, if any portion of the frame-work should be firmly imbedded into the brick-work, which, in its turn, is let into the ground. This distinction would moreover, doubtless, reconcile in some degree the two decisions already quoted; but at this distant period of time, many of the minor details upon which such cases frequently depend, have been lost sight of, if not altogether omitted in the original reports. If, therefore, this point should ever again be raised, we must express our decided opinion, that tenants carrying on the trade of gardeners and nurserymen, would be entitled to remove such buildings as they set up for the convenience of their occupation, if not absolutely and firmly let into the freehold, so as to damage it by their removal; and the more so, as the reasons on which the privilege is allowed in other cases, obtain also in this; and it would be unjust to deprive this class of persons of that favour and encouragement, which, manifestly for the public benefit, has been accorded to others.

CHAPTER III.

ON THE RIGHT TO REMOVE FIXTURES, AS MODIFIED
BY THE LEGAL CHARACTER OR RELATIVE POSITION
OF THE CLAIMANTS.

THE law on the subject of fixtures has not been settled without reference to the legal character and respective situations of the parties claiming them. In questions arising on this subject, it has always been a material and important inquiry, who are the litigant parties, and what interest each individual has in the estate or premises, with reference to which the dispute has arisen.

Distinctions made by the law according to the legal character of claimants.

These disputes have occurred most frequently, and the cases hereinafter cited have been decided, between three classes of persons, namely, the heir and the executor of the owner in fee; the personal representatives of the tenant for life or in tail, and the remainder-man or reversioner; and landlord and tenant. We shall proceed to treat of each of these in its due order.

Classes of Claimants.

SECT. I.—*As between Heir and Executor.*

THE death of the owner of any fee, leaves two descriptions of representatives, "the heir," and "the executor;" the former having a legal title to the real estate, the latter an "ex officio" claim to the personal property of the deceased. Having entered upon the inheritance allotted to him by the law, the heir is often harassed by the demands of the personal representatives of his ancestor, for certain chattels which had been annexed to the freehold by the

Relative positions of Heir and Executor.

The law favours the heir, with regard to fixtures attached to his inheritance.

latter during his life, but which at his decease may be again severed and become part of his personal estate. In all such cases, however, the privilege of removing fixtures is most limited. The law favouring the heir, and discountenancing the claims of those personal representatives who would despoil the real inheritance, in order to increase the personal assets of the deceased.

Ancient rule of law as between heir and executor.

The ancient rule, supported by all the old authorities, is, "that the executor shall not have the incidents of a house, as glass, doors, wainscot, and the like, any more than the house itself; nor pales, walls, stalks, tables dormant, furnaces of lead and brass, vats in a brew and dye-house, standing and fastened to the walls, or standing in and fastened to the ground in the middle of the house (though fastened to no wall), or copper or lead fixed to the house, the doors within and without that are hanging to, or serving any part of the house. But if the glass be from the windows, or there be wainscot loose, or doors more than are used that are not hanging, or the like, these things shall go to the executor or administrator."

Relaxation of the ancient rule with respect to trade fixtures, as laid down by Lord Ellenborough.

This rule has however been relaxed in modern times in favour of those things set up in relation to trade. Lord Ellenborough, in giving judgment in the case of *Elwes v. Maw (a)*, says: "In deciding whether a particular fixed instrument, machine, or even building should be considered as removable by the executor, as between him and the heir, the court in the three principal cases on this subject (viz. *Lawton v. Lawton (b)*," which was the case of a fire-engine, erected by a tenant for life for working a colliery, *Lord Dudley v. Lord Ward (c)*; which was also the case of a fire-engine, for working a colliery erected by a tenant for life: and *Lawton*, executor,

(a) 3 East, 53.

(b) 3 Atk. 13.

(c) Amb. 113.

v. *Salmon* (*d*), which was the case of salt-pans, and which came on in the shape of an action of trover brought for the salt-pans by the executor against the tenant of the heir at law,) “may be considered as having decided mainly on this ground, that where the fixed instrument, engine, or utensil, (and the building covering the same falls within the same principle) was an accessory to a matter of a personal nature, that it should be itself considered as personalty.” In the first two cases alluded to in this judgment, Lord Hardwicke was of opinion that a colliery was not only an enjoyment of the estate, but in part the carrying on a trade, and therefore the executor was entitled to the engines and machinery, and not the heir. In the last case, Lord Mansfield considered the salt-pans as not accessory to the carrying on of a trade, but only as the means of enjoying the benefit of the inheritance, and therefore adjudged them to the heir.

Lord Hard-
wicke's opi-
nion.

Lord Mans-
field's
opinion.

In a case before Lord C. B. Comyns at Nisi Prius (*e*), he decided that a cider-mill was an accessory to the trade of making cider, and therefore that it should go to the executor and not to the heir. Indeed a cider-mill appears to be on the same footing as other trading fixtures of the same sort, as “brewing-vessels, coppers and fire-engines.” (*f*)

Opinion of
Lord C. B.
Comyns.

With respect to *ornamental* fixtures; hangings nailed to the walls, and a furnace fixed to the freehold, and purchased with the house, were given to the executor (*g*).

Ornamental
fixtures.

A covenant to convey a house *and all things affixed to the freehold thereof*, was held not to include hangings and looking-glasses fixed to the walls with nails and screws (*h*), and which were as

Hangings
and looking
glasses.

(*d*) 1 Hy. Bl. 259, *in notis*.

(*e*) Cited in *Lawton v. Lawton*, 3 Atk. 13, 16, n.

(*f*) B. N. P. 34; see also “Trade Fixtures,” *ante*, p. 191.

(*g*) *Squier v. Mayer*, 2. Freem. 249.

(*h*) See also *ante*, p. 186, for a further application of this principle.

Pictures.

Rule laid down by Blackstone.

wainscot, there being no wainscot underneath (*i*). A contrary opinion had been expressed in an earlier case, where *pictures put up instead of wainscot* were adjudged to the heir; for the house should not come to him maimed or disfigured (*j*). There is some contradiction among the authorities on this subject, and it is probable that each individual case would be decided according to its own individual merits, and any special circumstances, with a leaning rather towards the heir than to the executor (*k*). The rule as laid down by Mr. Justice Blackstone is consonant with justice and common sense. "Whatever," he says, "is *strongly affixed* to the freehold, or inheritance, and cannot be severed thence without violence or damage, *quod ex ædibus non facile revellitur*, is become a member of the inheritance, and shall therefore pass to the heir" (*l*).

SECT. II.—*As between the personal Representatives of a Tenant for Life or in Tail, and the Remainder-man or Reversioner.*

Relaxation of the Rule of Law in favour of the personal representative.

THE administration of the law on the subject of fixtures was considered by us in our last section with relation to the different classes of representatives of the same individual, and we have seen the rigour with which the inheritance is protected against any claims set up by those who may be interested in increasing the personal estate of the testator. The subjects of our present section are claimants as the representatives of different persons, and the strict rule of the law is, in this case, modified and relaxed in favour of the personal representative. In other words, the same law which gives a kindly preference to the heir before the executor, shows less jealousy

(*i*) *Beck v. Rebow*, 1 P. Wms. 94.

(*j*) *Cave v. Cave*, 2 Vern. 508.

(*k*) See *Winn v. Ingleby*, 5 B. & Ald. 625; and *Colegrave v. Dias Santos*, 2 B. & C. 76.

(*l*) See Smith's Leading Cases, vol. 2, pp. 119, 121.

in guarding the rights of remainder-men and reversioners, than in protecting the interests of the immediate heir.

The cases cited under the last head fall, indeed, more properly under the present one; but inasmuch as they are applicable to both, and may be looked upon in all cases as leading authorities on the subject, it seemed proper to notice them as early as possible. It may, therefore, suffice to observe that, more indulgence being shown to the executors of a tenant for life or in tail as against the remainder-man or reversioner, than, in similar cases, as against the heir, it may safely be laid down that in every instance in which the personal representatives of a deceased owner have been allowed to sever and remove the fixtures as against the heir, they would be allowed to do it as against the remainder-man or reversioner. Whilst under any special circumstances, the same indulgence extended by the law to the heir in preference to the executor, would be exercised in this case, in favour of the personal representative as between him and any party entitled in reversion.

The general rule of practice being very similar to that in the last Section, may "mutatis mutandis," be safely adopted in this.

SECT. III.—*As between Landlord and Tenant.*

HERE the Courts of Justice have gone much further in relaxing the rigour of the ancient rules than in either of the former cases. The tenant for years has always (or from very early times) been privileged in the removal of chattels which he has annexed to the freehold during the term. This privilege, as we have already shown (*m*), was first secured in favour of trade-fixtures, out of regard to the interests of trade and in order to encourage industry; thence it was soon extended to other branches, such as domestic and ornamental fixtures, and although not very clearly established in regard to agricultural fixtures, properly

Relaxation of the rule of law as between landlord and tenant.

(*m*) "Trade Fixtures," *ante*, p. 191.

so called, has yet been held to include hot-houses, green-houses, and many other similar erections.

All tenants give equal right of removal of fixtures.

Cases in which disputes chiefly arise.

As the law of fixtures is in this place to be enquired into by us, chiefly with a view to determine its bearings upon the interests of landlords and tenants, it may be proper to premise, that whether the tenant be a tenant for life, for a term of years, or from year to year; whether he hold by lease under seal, by a written agreement not under seal, or by parol demise, his rights in respect of fixtures which he is entitled to remove, are in all cases the same. And, inasmuch as questions as to the right to fixtures arise (as we have seen) principally between the heir and executor of the owner in fee; between the personal representatives of tenant for life or in tail, and the remainderman or reversioner; and between landlord and tenant; it cannot be too carefully borne in mind that the law is most indulgent in the last case and most rigid in the first; so that where annexations to the realty have been held removable as between the former classes of litigants, we may confidently conclude they would be held removable as between the last; but that it is not equally safe always to infer, that because a tenant for life or years has been allowed to sever a chattel from the freehold as a fixture, therefore the executors of a former owner of the fee would be permitted to do it.

All fixtures removable by other parties, may be assumed to be removable by a tenant as against his landlord.

The cases which illustrate and establish the law as between these parties respectively will severally fall under review in future sections of this treatise; and, therefore, to avoid a wearisome repetition of the same authorities, we shall content ourselves with stating briefly, that in every case where fixtures have been held removable as between other parties, they may be assumed to be removable by the tenant as against his landlord; and that under special circumstances, the presumption must, *primâ facie*, be made in favour of the tenant, as the rule of law, if modified at all, will be relaxed in his favour who claims an original right.

We cannot however close this subject altogether

without glancing at one other class of litigants, whose rights on this subject have frequently been matter of judicial enquiry and decision ; but who do not strictly fall under either of the previous heads.

SECT. IV.—*As between Ecclesiastical Persons and Corporations sole, and their Successors.*

THE incumbent of a benefice, the holder of a prebendal stall, a dean, a bishop, and all other ecclesiastical functionaries, together with any person filling an office which constitutes him a corporation sole, is regarded as a tenant for life. Hence the right to remove fixtures in the case of such persons is governed by the same principles as regulate the privilege in the case of executor of tenant for life and remainder-man or reversioner : whatever would pass to the personal representative in the one case would pass in the other ; and whatever the individual coming into possession of an estate at the death of the preceding owner would be entitled to claim as part of the inheritance, would also pass to the successor of the rector, vicar, bishop, or other ecclesiastical person, or corporation sole.

General rule as to ecclesiastical persons, &c.

Burn's Ecclesiastical Law lays it down, "that if an incumbent enter upon a parsonage-house, in which there are *hangings, grates, iron backs to chimneys*, and such like, (not put there by the last incumbent, but which have gone from successor to successor), the executor of the last incumbent shall not have them ; but it seemeth they shall continue in the nature of heir-looms : but if the last incumbent fixed them there only for his own convenience, it seemeth that they shall be deemed as furniture or household goods, and shall go to his executor."

Hangings, grates, iron backs to chimneys.

By the same rule the ornaments of a bishop's chapel are reckoned parts of the realty which cannot be severed, but pass with it in the nature of heir-looms, belonging to the successor to the see and not

Ornaments of a bishop's chapel not removable.

to the executors of the deceased bishop (*n*). It has been doubted whether, if an incumbent voluntarily determine his own interest, either by accepting another benefice, or by resignation, he would be allowed afterwards to remove his fixtures; or whether, as in the case of emblements (*o*), he would not be considered to have abandoned his property in them. In conformity with the doctrine laid down in *Penton v. Robart*, he might probably be held entitled to remove them, if he did so before he had actually relinquished possession of the house and premises.

(*n*) *Bp. of Carlisle's Case*, Year Book, 21 Edw. 3, 48; *Cowen's Case*, 12 Rep. 106.

(*o*) *Bulwer v. Bulwer*, 2 B. & Ald. 470. Emblements are those growing crops to which a tenant from year to year, or the executor of a tenant for life, or other person whose interest in the premises is of uncertain duration, is entitled on the determination of his tenancy.

CHAPTER IV.

ON THE RIGHT TO REMOVE FIXTURES AS AFFECTED
BY PRIVATE STIPULATION OR PARTICULAR CUSTOM.

THE law of Fixtures, as we have hitherto treated of it, is the general rule by which all disputes between landlord and tenant (or other parties) on the subject must be settled, in case there be no specific agreement between them. But it is clear that the rule of law becomes of no importance where any contract has been entered into, by the terms of which the rights and liabilities of the contracting parties are to be determined. The only question which can then arise is one of construction; and the claims of the reversioner and the privileges of the tenant must alike abide the decision of that question. The relative positions of the parties may be varied indefinitely by these private stipulations; and it would be impossible to enumerate all the modifications, limitations, and restrictions of the ordinary law, which may be introduced by covenant, agreement, or proviso. These variations may relate either to the nature of the articles to be removed, to the time of removal, or to the mode of their transfer at the determination of the tenancy; and, in every one of these respects, the doctrine of fixtures may be rendered more stringent, or more lax, more favourable to the interests of tenants or more rigid in protecting those of the reversioners. It may be well, however, to allude here to the prominent points in a few of the more common instances.

General law
controlled by
particular
agreement.

SECT. I.—*As to the effect of a Covenant to Repair.*Covenant to
repair.Trade fix-
tures.

A COVENANT by a tenant to yield up in repair, at the expiration of his lease, all buildings which should be erected during the term upon the demised premises, includes buildings erected and used by the tenant for the purpose of trade and manufacture, if such buildings be let into the soil, or otherwise fixed to the freehold, but not where they merely rest upon blocks or pattens (*a*). In other words, this covenant includes all *fixtures* set up for the purposes of trade, but not mere chattels (*b*).

In the case of *Marter v. Bradley* (*c*), the defendant occupied a mill as tenant to the plaintiff, under a lease containing a covenant, on the part of the tenant, to deliver up the premises at the end of the term in good repair, “together with all locks, bolts, bars, and all other fixtures, fastenings, and improvements that should at any time during the term be erected, set up, or fixed upon the premises;” under this covenant it was held, that mill-stones set up by the tenant came within the term “improvements” in the covenant, and consequently could not be removed by him at the end of the term, although the custom of the country authorized him to remove them.

Domestic
fixtures.

A covenant to keep in repair the premises, and all erections, buildings, and improvements erected on the same during the term, is broken by the removal of a verandah erected during the term, the lower part of which was affixed to the ground by means of posts (*d*).

There was a covenant in a lease to sustain and keep in order all erections and improvements which, during the term demised, should be made or set up on the premises. The lessee assigned his interest, and the assignee had the consent of the lessor to this

(*a*) *Naylor v. Collinge*, 1 Taun. 19.

(*b*) For a more distinct definition of this difference, see *ante*, Chap. I.

(*c*) 2 M. & Sc. 25; and *S. C.* 9 Bing. 24.

(*d*) *Penry v. Brown*, 2 Stark. 403.

proposition, that, if the assignee erected a greenhouse, he might take it down and carry it away at the expiration of his term. The lessor died. The assignee, when his term was out, took away the greenhouse, and the lessor's executor sued the original lessee for breach of covenant in not sustaining and keeping up the said erection:—*Held*, that the parol consent of the lessor to the removal, hereafter, of the greenhouse, if it should be erected, was no answer to a breach of the conditions of an instrument under seal (*e*).

No question arose in this case as to whether the greenhouse was affixed to the soil, but only whether it was an "erection and improvement" within the meaning of the terms of the covenant (*f*).

SECT. II.—*Effect of a new Agreement.*

WHERE the tenant's continuance in possession is under a new agreement, his right to carry away the fixtures is determined, if no specific mention is made of them; for the landlord is supposed to have been entitled to both land and fixtures, and to have demised both to him. A new agreement.

In *Fitzherbert v. Shaw* (*g*), the defendant had held certain premises from year to year since 1765. In 1787 they were purchased by the plaintiff, who having given the defendant notice to quit, afterwards brought ejectment against him to obtain possession. In March 1788 (while the action was pending) the parties entered into an agreement that judgment should be signed for the plaintiff, but with a stay of execution till the Michaelmas following; and it was

(*e*) *West v. Blakeway*, 9 Dowl. 846; 2 M. & G. 729.

(*f*) Nevertheless, it clearly was affixed to the soil, for the framework of it was laid upon walls built for the purpose of receiving it, and embedded in mortar thereon.

(*g*) See Scott's N. R. 199, 218; 1 H. B. 258.

stipulated that the defendant should remain in possession in the mean time. In this agreement *no mention was made of any buildings or fixtures*. Between the time of entering into the agreement and the ensuing Michaelmas the defendant removed several things from the premises, which would have been removable during the tenancy; but the court held that, by the agreement, the parties had made a new contract which put an end to the term; and, from a fair interpretation of that agreement, it must be implied that the tenant was to do no act to alter the premises, and he was therefore precluded from taking away the fixtures.

On the other hand, where there was a covenant in the lease that the fixtures should be valued to the landlord at the end of the term; and, the tenant having become bankrupt, the premises had been delivered up to the landlord, who refused to pay the amount of the valuation to the assignees; it was held, that the latter were entitled to recover the fixtures in trover, on the principle that the landlord being, by the terms of the covenant, entitled to the possession of the fixtures on condition of his paying for them, it would have been inconsistent with that stipulation to hold that he could retain them after breaking that condition (*h*). Here the ordinary rule was qualified by express agreement; the covenants having been determined by the bankruptcy and refusal of the assignees to take the lease.

SECT. III.—*Effect of a subsequent Demise.*

A subsequent demise.

WHERE the tenant has erected fixtures for the purposes of his trade on the demised premises, and afterwards takes a new lease, commencing at the expiration of the former one, and the latter lease contains a general covenant to repair, the lessee is bound to repair such fixtures, unless it can be satisfactorily

(*h*) *Fairburn v. Eastwood*, 6 M. & W. 679.

shown that they were not intended to pass under the general words of the second lease ; and it is doubtful whether any circumstances extrinsic to the deed can be adduced to show that they were not intended so to pass (i).

From the cases cited under the last two sections, we may conclude, that where a tenant has an existing right to remove fixtures erected by him during his term, such right may be superseded by *any* new agreement made during such term, in which there is no mention of the fixtures (k). Whether the right would be lost from the date of the agreement, or only from the time at which it began to take effect, may perhaps be questionable. In all probability, however, such a contract would not avail to deprive a tenant of any fixtures, until he began to hold under the terms of it, from which period the law presumes a demise to him both of the freehold and the fixtures ; the whole having reverted to the landlord at the instant at which the previous tenancy was determined, and the new one entered upon. Therefore, until the date of commencement of the new agreement he might remove his fixtures, but not after that time. Under all the circumstances, however, due caution should be exercised by a tenant not to enter into any new agreement during the existence of another, without some special clause either in reservation or abandonment of the fixtures.

SECT. IV.—*As to the Effect of a particular Custom*

It has been long settled that in commercial transactions, extrinsic evidence of custom and usage is admissible to annex incidents to written contracts, in matters with respect to which they are silent. The same rule has also been applied to contracts in other

A particular custom.

(i) *Thresher v. East London Water-works Company*, 4 D. & R. 62 ; 2 B. & C. 608.

(k) *Amos & F. on Fixtures*, p. 102.

transactions of life, in which known usages have been established and have prevailed; and this has been done upon the presumption, that in such transactions the parties did not mean to express in writing the whole of the contract by which they intended to be bound, but “sub silentio” to acknowledge the influence of those known usages. Accordingly, in *Wigglesworth v. Dallison* (l), the tenant was allowed an out-going crop, though there was a formal lease under seal. There the lease was entirely silent on the subject of such a right; and Lord Mansfield said the custom did not “alter or contradict the lease, but only added something to it” (m). The principles thus luminously expounded by the learned judge are clearly as applicable to the case of contracts between landlords and tenants with respect to fixtures, as to the other cases in which evidence of custom and usage has been held admissible to annex incidents to, or to explain, written agreements with regard to other matters. Such evidence, indeed, is only receivable, when the incident which it is sought to import into the contract, is consistent with the express terms and the evident implications of the written instrument. But, with this qualification, it is not easy to discover a reason why proof of local and particular usages should be rigidly excluded in questions respecting fixtures, whilst it is freely admitted to determine disputes on other and similar subjects between landlord and tenant.

It is true that in *Marter v. Bradley* (n), certain fixtures were held irremovable, notwithstanding a custom to the contrary; but there the express terms of the covenant to repair were extensive enough to include the articles in dispute; and evidence of custom in contravention of the express terms of a written contract is never admissible (o).

(l) Douglas, 201.

(m) See judgment of Parke, B. in 1 M. & W. 474.

(n) 2 M. & Sc. 25; and 9 Bing. 24.

(o) See Smith's Leading Cases, vol. 1, 309, and cases there cited.

There is no case on record in which local usages have been held to explain or add to the written agreements of parties regarding fixtures ; but it appears to us, that under the usual restrictions, evidence of such usages might be given on matters with regard to which the contract itself was silent, and certain chattels annexed to the freehold be held removable or irremovable, according to the ordinary custom in the immediate neighbourhood of the demised premises.

CHAPTER V.

ON THE RIGHT TO REMOVE FIXTURES AS MODIFIED
BY A CHANGE IN THE LEGAL CHARACTER AND
LIABILITIES OF THE OWNER.SECT. I.—*In case of Distress.*

Fixtures
exempted
from distress
at common
law.

FIXTURES are exempted from distress at common law for two reasons. In the first place, by virtue of the principle, alluded to in an early part of this treatise, that whatever was annexed to the freehold, became thenceforth a part of it, fixtures were accounted part of the property demised; and the remedy for the recovery of rent was not to seize a part of the thing demised, but something brought upon the premises by the tenant. And, in the second place, because the article distrained upon was regarded as a pledge in the hands of the landlord for the performance of certain duties and services, which he was entitled to retain until those duties and services were performed, but was then bound to restore in the same state in which he seized it. But inasmuch as fixtures are annexed to the freehold, they must necessarily be more or less injured by removal; and, at all events, cannot be restored as they were when they were seized (*a*).

Constructive
fixtures can-
not be dis-
trained.

Nothing, therefore, is more certain than that fixtures cannot be distrained (*b*). Neither can any articles constructively annexed to the freehold, as locks, keys, rings, &c.; nor articles removed for a temporary purpose only, as a mill-stone to be picked (*c*).

(*a*) Gilbert on Distress, p. 34, 48. See also *Simpson v. Hartopp*, Willes, 514; and *Pitt v. Shew*, 4 B. & Ald. 206.

(*b*) Co. Litt. 47. b.

(*c*) 14 Henry VIII. p. 25; Finch, bk. 2, p. 135.

Nor articles which though not really affixed by nails or screws to the freehold, are yet considered in law to form a part of it,—as the anvil of a smith, which is reckoned part of the forge (*d*); or a kiln, which is deemed part of the freehold, and not a personal chattel (*e*).

So also in a recent case it has been decided, that a kitchen-range, stoves, coppers and grates, though removable by the tenant, are not distrainable (*f*). Tenant's fixtures, if necessary to a house, &c., cannot be distrained.

It was doubted whether machinery fixed by bolts to the floor of a factory was distrainable for rent; Machinery. ultimately the case was decided on another point (*g*), but from a careful consideration of the authorities, we are of opinion, that, generally, it is distrainable.

The privilege of fixtures from distress is absolute, The privilege of fixtures from distress is absolute. and not, as in the case of implements and utensils of trade, conditional on there being a sufficient distress upon the premises without them (*h*).

SECT. II.—*In case of Execution.*

CHATELS affixed to the freehold are not therefore exempted from being taken in execution. It seems formerly to have been considered that they were not liable to be seized in the same manner as the movable goods of the debtor (*i*); but this rule has been reversed in modern times in favour of the rights of creditors. Fixtures not exempted from execution as from distress.

(*d*) Br. Ab. Distress, pl. 23.

(*e*) *Nibley v. Smith*, 4 T. R. 504.

(*f*) *Danby v. Harris*, 1 Gale & Dav. 234; 5 Jur. 988.

(*g*) *Duck v. Braddyll*, M'Clel. 217; 13 Price, 459.

(*h*) *Simpson v. Hartopp*, Willes, 514; *Gorton v. Falkner*, 4 T. R. 569.

(*i*) 20 Hen. VII., 13; 21 Hen. VII., 26; *Day v. Bisbitch*, Cro. Eliz. 374. And see 1 Roll. Ab. Execution, 891. Com. Dig. Exec. C. 4. Process, D. 6; Gilb. Exec. 19. Under a writ of attachment in real actions, the Sheriff could not seize fixtures, Com. Dig. Process, D. 6; Vin. Ab. Attach. B. C.; 2 Inst. 254.

Hence fixtures under such circumstances are now regarded as personal chattels, insomuch that they may be severed and sold under a writ of *fieri facias* or other similar process.

The tenant's
fixtures alone
liable.

But it is only the tenant's (or debtor's) interest in the fixtures which can be sold, and they are therefore liable to be seized under an execution against his goods and chattels, only in those cases in which the tenant has the right to sever and remove them. Under such circumstances the creditor may exercise the privilege of the tenant by converting them into chattels, and selling them in satisfaction of his debt (*k*).

Fixtures de-
mised by
lease not
liable to exe-
cution.

Therefore where the fixtures have been demised with the premises, they are not liable to an execution; for they are the property of the landlord, the tenant being only entitled to the use and enjoyment of them during the term, so long as they continue annexed to the freehold (*l*). In such case, the tenant's interest in them is forfeited at the moment of severance, and they revert absolutely to the landlord, who may maintain trover for them against the sheriff (*m*).

Fixtures set
up by the
owner of the
freehold not
liable.

Fixtures set up by the owner of the freehold on his own estate, cannot be taken in execution, for they are part of the estate (*n*). Here the interest in the land, and the interest in the fixtures are identical, which is not the case where a lessee for years has a right to the fixtures.

Except such
as would go
to the execu-
tor and not to
the heir.

Such annexations to the estate, however, as have been set up either in relation to trade, or for domestic convenience, and which would go to the executor of the freeholder as part of the personal estate, and not to the heir with the inheritance, would unquestionably be held liable to be seized in execution, in conformity with the rule in cases of bankruptcy (*o*).

(*k*) *Poole's Case*, 1 Salk. 368; 1 B. & B. 512; and see *Ryall v. Rolle*, 1 Atk. 170, 176.

(*l*) *Gordon v. Harper*, 7 T. R. 9.

(*m*) *Farrant v. Thompson*, 5 B. & Ald. 826, 2 D. & R. 1.

(*n*) *Winn v. Ingleby*, 5 B. & Ald. 625; *Place v. Fagg*, 4 M. & R. 277.

(*o*) *Trappes v. Harter*, 2 C. & M. 153; 3 Tyr. 603.

Where the tenant is entitled to the fixtures, and has also a lease; if the sheriff cannot find a purchaser for the latter, he may sever the fixtures, and sell them separately (*p*).

If a tenant on lease be entitled to the fixtures, they are liable.

It should be observed that it is only in the peculiar case of fixtures, that the law regards things attached to the realty as personal chattels in favour of creditors. The same privilege does not exist in respect of articles which are removable under powers appendant to estates, or in consequence of the private agreements of parties (*q*).

Fixtures, if subject to powers under contract, not liable.

SECT. III.—*In case of Bankruptcy.*

THE statute 6 Geo. IV. c. 16, s. 72, provides, that “if any bankrupt, at the time he becomes bankrupt, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels, whereof he is reputed owner, the commissioners shall have power to sell and dispose of the same, for the benefit of the creditors under the commission.”

That fixtures are not “goods and chattels” within the meaning of the Bankrupt Act so as to pass to the assignees as goods “in the ordering or disposition” of the bankrupt, was decided in the case of *Horn v. Baker* (*r*), and has been affirmed in many subsequent cases (*s*); therefore, where the fixtures on the land do not belong to the bankrupt they cannot be sold under the fiat.

Fixtures on the premises, but not belonging to the bankrupt, not liable.

A steam-engine affixed to the freehold for the purpose of working a colliery, and to be used by the tenant during his term, the property remaining in

Steam-engine.

(*p*) *Barnard v. Leigh*, 1 Stark. 43.

(*q*) *Amos & F.* p. 262. See Observations by Lord Holt, in *Poole's* case, cited above.

(*r*) 9 East, 215.

(*s*) *Clark v. Crownshaw*, 3 B. & Ad. 804.

the landlord, would not pass to the tenant's assignee (*t*).

Where the tenant has purchased the fixtures.

A lessee for years who had purchased the fixtures of his landlord, mortgaged the term and fixtures, and afterwards became bankrupt; they were held not to pass to his assignees, for "the real nature of the tenant's interest in them was that he had a right to remove them during the term,"—an interest sufficient to justify their being seized under a writ of execution, but not sufficient to bring them within the operation of the clause as to "goods and chattels in the order and disposition of the bankrupt (*u*).” Until severance, the fixtures are part of the freehold, and cannot therefore be said either to be "goods and chattels," or to be in the "order and disposition" of the person in possession. "The reason of this is, that with regard to real property, the possession is considered as nothing, but the title only is looked to" (*x*). There is, in fact, no more reason to infer the ownership of the fixtures from the possession and enjoyment of them, than the ownership of the house itself. No false credit, therefore, is acquired from the mere use of the fixtures.

Title of landlord or mortgagee preferable to that of assignee.

If fixtures belong to the landlord, or to a mortgagee, the title of either will be preferable to that of an assignee.

But the articles must be firmly fixed to the freehold to be excluded from the operation of the statute in question. Thus the ordinary furniture of a coal-mine is property of which the party who works the mine is the reputed owner, and which, on his bankruptcy, vests in his assignees under the clause in question; although, as we have seen, a steam-engine firmly affixed to the freehold does not pass (*y*).

(*t*) *Coombes v. Beaumont*, 5 B. & Ad. 72.

(*u*) *Boydell v. M'Michael*, 1 C. M. & R. 177.

(*x*) See Judgment of Baron Parke, in *Boydell v. M'Michael*.

(*y*) *Coombes v. Beaumont*, 2 Nev. & M. 235; 5 B. & Ad. 72.

A bankrupt, becoming the owner as well as occupier of a freehold cotton-mill, gave the petitioners an equitable mortgage on it, "together with the steam-engines, and also all and singular other the movable and fixed machinery and steam-pipes, steam-mill and premises, or occupied or used therewith;" and the bankrupt continued in possession of the mill and fixtures up to the period of his bankruptcy:—*Held*, that all parts of the machinery and fixtures, which were so attached to the premises as to be legally affixed to the freehold were not to be considered as "goods and chattels" within the meaning of the 72nd clause of the Bankrupt Act, and the assignees, therefore, had no right to claim them as against the equitable mortgagee (z).

A. being tenant in fee of a cotton-mill, in which there was a steam-engine, boilers, &c., mortgaged the mill, engine, boilers, &c., to B., but remained in possession till his bankruptcy. The entablature plate of the engine, which however formed no part of the working apparatus, was fixed to the freehold of the mill; every other part of the engine being secured by bolts and screws, so that it might be removed without injury to the building:—*Held*, that the steam-engine was not in the order and disposition of A. at his bankruptcy (a).

The owner of a freehold gave a mortgage for a term of years, but continued in possession; while in possession he added fixtures:—*Held*, that they were not in his reputed ownership (b).

In determining whether certain engines, machinery, or other articles in the nature of fixtures would pass to the assignees as "goods and chattels in the order and disposition of the bankrupt," assistance may frequently be derived from reference to the custom

Fixtures under an equitable mortgage do not pass to the assignee.

Custom of the country to be taken into consideration.

(z) *Ex parte Wilson*, 4 Dea. & Ch. 143; 2 Mont. & Ayr. 61; and see Flath. Arch. Bkptcy. 261, 10th Ed.

(a) *Hubbard v. Bagshaw*, 4 Sim. 326. See also *ex parte Lloyd*, 1 Mont. & Ayr. 494; 3 Deac. & Ch. 765.

(b) *Ex parte Belcher*, 2 Mont. & Ayr. 160; and see *ex parte Scarth*, 4 Jur. 826.

prevailing in the locality in respect to those articles (c). Therefore, where it is a common and notorious practice to let any articles to the tenant with the premises, the property in them remaining in the lessor, it seems clear that the assignee would not be entitled. Thus, machinery affixed to the freehold of iron-works is not considered to be within the order and disposition of the bankrupt trader, where, by the custom of the country, such articles are furnished by, and continue to be the property of the lessor (d).

But where the assignees rely upon the custom of the country to raise a title by order and disposition, but the evidence as to usage is both ways, this will not entitle the assignees ; it lying upon them to prove the reputed ownership (e).

Special covenant in a lease, reserves the fixtures in case of bankruptcy.

So the claim of the assignees is liable to be defeated by a covenant in respect of the fixtures in the tenant's lease. Thus, where a colliery with all the machinery and implements necessary for working it, was leased for a term with a proviso for re-entry for the landlord on non-payment of rent, and a covenant on the part of the lessee, at the expiration or other sooner determination of the demise, to deliver up the machinery and implements conformably to an inventory annexed to the lease, of which a re-valuation was to be made three months before the expiration of the demise, and the landlord recovered judgment in ejectment in Trinity term for a forfeiture for the non-payment of the rent, but did not execute the writ of possession until the 8th of November, and the tenant committed an act of bankruptcy next day:—*Held*, first, that the landlord was entitled to take possession of all the machinery and implements (some of which had been brought on the premises by the tenant during the term), though no previous valuation had been made ; secondly, that the possession of

(c) See *Trappes v. Harter*, 2 C. & M. 153 ; 3 Tyr. 604 ; and Sup.

(d) *Ruffard v. Bishop*, 5 Russ. 346. And see *Hubbard v. Bagshaw*, 4 Sim. 326.

(e) *Ex parte Scarth*, 4 Jur. 826.

the machinery and implements by the tenant was only qualified, and did not come within the meaning of 21 James I., c. 19, (the old Bankruptcy Act,) so as to bar the landlord's right of re-entry on the 8th November; and thirdly, that the tenant's use of the machinery and implements, in the interval between the judgment in ejectment and the execution of the writ of possession, did not give him "the possession, order, or disposition" thereof with the consent of the true owner, within the meaning of the statute, so as to pass the property to his assignees (*f*).

(*f*) *Storer v. Hunter*, 5 D. & R. 240; 3 B. & C. 368. See also *Minshall v. Lloyd*, 2 M. & W. 450.

CHAPTER VI.

OF THE TIME AT WHICH FIXTURES SHOULD BE
REMOVED.

Time at
which fix-
tures must
be removed.

THE nature of the fixtures which a tenant may remove is in nowise affected by the nature of his interest in the premises, so that in this respect, whether he be tenant for a term of years, or from year to year, or at will, he may alike claim the privilege of removal. But the time at which he will be permitted to sever and remove fixtures depends materially on the nature of his tenancy. We will therefore, first consider the case where he is a termor, or tenant for a time certain.

SECT. I.—*In the Case of Termors, or Tenancies of a definite Duration.*

Case of a
termor gene-
rally.

HERE, knowing when his interest in the demised premises will cease by the expiration of his term, he is bound to remove his fixtures *before the conclusion of that term*. If he fail to do so, the presumption of law is that he has abandoned his property in everything which he has annexed to the freehold, and it is consequently considered to belong to the reversioner.

When the
term expires
by lapse of
time.

Hence in all the old cases and rules of law upon the subject, the privilege of the tenant is qualified in this manner. Thus, in the "Year Book," 20 Hen. VII. 13, the court speaking of the furnaces set up by a lessee for years, says "*during his term* he may remove them; but if he permit them to remain fixed to the soil *after* the end of his term, then they belong to the lessor." So, in *Poole's case*, before cited, Lord Holt says of the soap-boilers' vats, &c., "*during the term* he might remove them, but *after the term* they be-

came a gift in law to him in reversion and are not removable" (a).

In a recent case (b) where a tenant had left bells in a house, at the expiration of his term, which the landlord afterwards severed, the former brought an action of trover to recover them, contending that although he had no right after the determination of his tenancy to come upon the premises to remove them, yet that he had not lost his property in them, and therefore, so soon as they had been reduced to the state of mere personalties by severance, he was entitled to remove them. The court however held, that by quitting the premises without severing them he had abandoned his property in them, which had thereupon at once become vested in the landlord.

The authorities are all agreed upon this point, and the rule must therefore be considered binding, with the exception, however, of one case on which different opinions are entertained; one learned author (c) contends, that where a tenant continues to keep possession of the demised premises after the expiration of his term, he is still at liberty to remove his fixtures so long as that possession continues, although his legal interest in the land has ceased. This was decided in the case of *Penton v. Robart* (d), and in his judgment, Lord Kenyon intimated an opinion that a tenant had a general right to come upon the premises after the term was expired, for the purpose of taking away any fixture which he might have removed during the term. We are of opinion, however, that the case itself does not establish any such right, but decides only, that where the tenant's possession of the premises continues, although his term has expired, he is permitted to take away the fixtures which he previously had a right to claim. The cases are clearly

Where possession is relinquished.

Where possession is retained.

Penton v. Robart.

(a) See *Lee v. Risdon*, 7 Taun. 191; *Davis v. Jones*, 2 B. & Ald. 165; and *Buckland v. Butterfield*, 2 B. & B. 54.

(b) *Lyde v. Russell*, 1 B. & Ad. 394.

(c) *Amos & F. on Fixtures*, pp. 88, 95.

(d) 2 East, 88.

different where a tenant has left the premises, and where he continues to hold them; in the former, the law presumes an abandonment of the property; in the latter, no such presumption can exist during the actual occupancy of the tenant, who is still in the possession and enjoyment of those very articles with respect to which the presumption of abandonment would arise. This case is, however, considered by some to establish the doctrine, that so long as the actual possession is retained by the tenant, so long his right to sever and remove fixtures remains. On the other hand it is contended by a learned writer (*e*), with great plausibility and force, that the case of *Penton v. Robart*, being at variance with all the other decisions on the subject, must be considered as overruled, and as establishing a principle which has not been recognised by the courts, and would not be sanctioned were the question to be litigated. He argues, that immediately on the expiration of the term the "right to the fixtures vests in the reversioner as a part of the land, and if he were to bring ejectment he would be entitled to recover the land and everything annexed thereto;" and further, that if this claim were liable to be defeated by the tortious holding over of the tenant, the latter would be allowed, contrary to every principle of law and equity, to take advantage of his own wrong.

Right to fixtures during continuance of possession sanctioned by custom.

In such a difference of opinion as to the dictum of the law, a consideration of the custom may perhaps help us to arrive at a just decision. Now, by the custom, it is well known that if a tenant continues his tenancy after the expiration of his original lease, he so continues it by the silent customary consent of both parties, subject to the covenants and mutual obligations of the lease last expired. To such an extent does this custom prevail in the midland and western counties of England, and in South Wales, that it is very usual to have leases, both

agricultural and domestic, for one year only, whilst the tenancies, continuing through many subsequent years are held "by reference" upon the terms of the expired lease. Looking then at this very extensive usage, and considering it to be perfectly fair and rational, we cannot but consider it a good guide in this question; and therefore we should at once adopt the first of the opinions here quoted, and say that so long as the tenancy continues (of course without hostility) by the silent consent of both parties, so long the tenant is entitled to every benefit conferred on him by the expired lease; and therefore, amongst others, to the removal or appropriation of those fixtures to which he would have been by law entitled previously to the determination of his registered term.

A very recent case (*f*) corroborates most materi-
ally this view of the question. The tenant's term, by
virtue of a proviso in the lease, was forfeited by the
bankruptcy of the lessee, and the lessor entered upon
the premises in order to enforce the forfeiture, and
three weeks afterwards, the assignees of the lessee
still continuing in possession, removed and sold a
fixture put up by the lessee for the purposes of trade,
and the jury found that it was not removed within a
reasonable time after the entry of the lessor:—*Held*,
that they had no right so to remove it, and that the
lessor might recover it in trover. And it would seem
that such would have been the case even without
such finding of the jury. "The rule," says Baron
Alderson in delivering the judgment of the court in
that case, "to be collected from the several cases
decided on this subject seems to be this; that the
tenant's right to remove fixtures continues during his
original term, *and during such further period of
possession by him, as he holds the premises under a
right still to consider himself as tenant.*"

Case in sup-
port of this
view.

Hence, the extension of the tenant's right allowed
in *Penton v. Robart* is at once recognised and qualified

(*f*) *Weeton v. Woodcock*, 7 M. & W. 14.

by these expressions, and it would seem therefore that the doctrine of an absolute vesting of the property in fixtures in the landlord at the expiration of the term, is liable to exception in every case where the tenant continuing in possession has a right still to consider himself as an accepted tenant, either by the express permission of his landlord, or by mere sufferance in the neglect of the latter to make an entry on and resume possession of the premises. But that if on the other hand the tenant hold over hostily so as to become a trespasser, as in the case of *Penton v. Robart* he will have lost all right to remove the fixtures.

Whether the legal presumption in favour of the reversioner is capable of being rebutted.

If the property in fixtures vest in the reversioner under certain circumstances, through a *presumed dereliction or abandonment* by the tenant, it is natural to inquire how far this legal presumption is capable of being rebutted by any act or formal declaration of the tenant on quitting the premises by which he disclaimed all intention of giving up his right to the landlord. The effect of such an act or declaration has never been decided ; but it is probable that the rights of the reversioner would be held to be unaffected by it, on the principles laid down in *Marston v. Roe (g)*.

SECT. II.—*In the Case of Tenants whose Interests are of uncertain Duration.*

It has never been explicitly decided whether such parties are entitled to any definite period after the expiration of their tenancy for the removal of their fixtures, but it may confidently be concluded that an exception would be established in their favour on the ground of certain analogies in other cases.

A reasonable Thus, the executors of a tenant for life have a reason-

(g) 8 Ad. & E. 59 ; and see *Davis v. Jones*, 2 B. & A. 166 : but see *Beaty v. Gibbons*, 16 East, 116.

able time allowed them to remove fixtures after the death of their testator (*h*); and the lessee of a clergyman who resigns his benefice is considered entitled to emblements (*i*), because his tenancy is determined by the act of another. In the case of *Wansborough v. Maton* (*j*), in which this question might have arisen, the article in dispute, "a wooden barn which rested by its own weight on a stone foundation," was decided to be a chattel and not a fixture, and on that point alone the judgment was given.

Supposing a tenant whose interest is of uncertain duration to have a right to remove fixtures after it has expired, it is clear from *Weeton v. Woodcock* (*k*), that such right must be exercised *within a reasonable time*. In that case three weeks was held not to be a reasonable time. It will always be a question for the jury, whether, under all the circumstances, due diligence has been used by the tenant, and no general rule can possibly be laid down upon that subject.

SECT. III.—*In Case of Forfeiture of Lease.*

WHERE the tenancy is determined by the act of the tenant, the law allows no indulgence; so that if the tenant incur a forfeiture and the landlord enters, he is entitled to the freehold as it stands, and the tenant has no right to sever the fixtures (*l*). By the terms of the rule, as laid down in *Weeton v. Woodcock* (above cited), a tenant who has done any act whereby he forfeits his lease is excluded from the privilege of having time allowed to sever his fixtures, for if the reversioner enter for the forfeiture, the tenant can no longer, even though he remain in pos-

(*h*) *Bulwer v. Bulwer*, 2 B. & Ald. 470.

(*i*) For a definition of Emblements, see *ante*, p. 212.

(*j*) 4 Ad. & E. 884.

(*k*) 7 M. & W. 14.

(*l*) *Storer v. Hunter*, 3 B. & C. 368.

session, have a right to consider himself as a tenant, but must be looked upon as a trespasser.

An incumbent resigning his living not entitled to any time beyond his term of possession.

So, as we have seen above, an incumbent who resigns his living is not entitled to indulgence, although his lessee is (*m*), for the resignation is his own act, and that act determines at once his estate and interest in the lands and hereditaments belonging to the benefice.

And this must be taken as a criterion to be applied to most cases; viz., whether the termination of the tenancy originates with the landlord or the tenant.

(*m*) *Bulwer v. Bulwer*, 2 B. & A. 470; and *supra*, p. 233.

CHAPTER VII.

TRANSFER OF FIXTURES.

UNDER this head it is proposed to treat of those changes of the possession and property of fixtures which are the result of contract; the consideration of the transfers frequently effected by act and operation of the law under certain circumstances, having been already enumerated, as in the case of bankruptcy, insolvency, &c. It is obvious that property in fixtures, as in all other things, may be made the subject of private contracts of various kinds, such as sale and purchase, by which the ownership is changed; or mortgage, by which the ownership of the property becomes subject to certain limitations and restrictions, in consequence of the rights and claims of the third party, the mortgagee; or, lastly, by bequest, a mode in which a transfer of the property is effected by the will of the testator. A few words concerning each of these in their order.

SECT. I.—*Of the Transfer of Fixtures by Sale and Assignment.*

It has long been settled, that under the word *land* all buildings and erections affixed to the soil will pass; on the general principle affirmed in that ancient maxim of law, "*Cujus est solum ejus est usque ad cælum*" (a). And this, notwithstanding other buildings standing on the ground, are specifically mentioned and described in the conveyance.

Transfer of
soil transfers
buildings
thereon.

(a) 1 Com. Dig. Grant, E. 3; Co. Litt. 4 a.; 2 Roll. Ab. Graunt. 1.

The same principle operates on fixtures.

On a similar principle, whatever personal chattels have been annexed to the freehold, become incident to the freehold, and will be included in a conveyance of the land in general terms. Thus it was decided, that vats fixed in a brewhouse or dyehouse should always go with the freehold, and pass by feoffment together with the inheritance (*b*).

In a more recent case (*c*), a windmill described as a wooden edifice, built on brickwork, and anchored into the ground by spores and land-tyes, being one foot under the surface of the earth, but removable at pleasure, was found by the jury not to be a fixture; nevertheless, its connexion with the land was of such a nature, that it seems to have been considered that by a conveyance of the land the purchaser would have been entitled to the mill without any mention of it in the deed. Although by the grant of a house the fixtures will pass, yet it is otherwise, where by the enumeration of particular fixtures in the conveyance, an intention is shown to exclude other fixtures of greater value and importance (*d*).

Effect of a new agreement.

We have already seen (*e*) the exemplification of the principle now under consideration, in the effect which a new agreement or a subsequent lease has upon the rights of a tenant who, during the continuance of the first demise, had affixed chattels to the freehold, which he would have been entitled to remove during the term. If the new contract made no mention of fixtures, the whole property as it stood was considered to pass to the lessee under the demise; and the whole of it, without the severance of anything, the latter was held bound to restore at the determination of his tenancy (*f*).

Making no mention of fixtures.

Conveyance.

The rule respecting the passing of personal chat-

(*b*) Year-Book, 21 H. 7, 26.

(*c*) *Steward v. Lombe*, 1 B. & B. 507; 4 Moo. 281.

(*d*) *Hare v. Horton*, 2 Nev. & M. 428, 5 B. & Ad. 715.

(*e*) *Ante*, p. 215.

(*f*) *Fitzherbert v. Shaw*, 1 H. Bl. 258; *Thresher v. East Lond. Water-works Comp.* 2 B. & C. 609; *Ward v. Smith*, 11 Price, 19.

tels attached to the freehold, by a conveyance of the freehold itself, was carefully considered in the case (before quoted) of *Colegrave v. Dias Santos* (g). The plaintiff being the owner of a freehold mansion-house, advertized it for sale by auction, and issued printed particulars, which took no notice of certain fixed articles, as mash-tubs, grates, closets, shelves, &c. The defendant became the purchaser at the sale, the house was conveyed, and possession given to him, the articles in question still remaining in the house:—*Held*, that these articles passed to the vendee under the conveyance of the freehold, in the absence of any stipulation that they were to be taken and paid for separately. The court seems to have been of opinion, that the rule between vendor and vendee was the same as that between heir and executor; for Bayley J. observed, “In the case of an heir selling a house which descends to him, in the absence of any express stipulation, he would be taken to sell it as it came to him, and the fixtures would pass.”

*Colegrave v.
Dias Santos.*

A widow, carrying on the business of a victualler, made a settlement previous to her second marriage, of her property; and she assigned upon the trusts of the settlement, “all and every the household goods, furniture, plate, linen, china, books, stock in trade, brewing utensils, and all other her effects:”—*Held*, that not only the stock in trade, &c. existing at the date of the settlement, but other articles afterwards in the course of the trade substituted for them, together with the good-will of the business, passed by the settlement (h).

The circumstances must be very peculiar to exclude fixtures from passing under a general conveyance of the freehold. Hence it is necessary, in an agreement for the sale of a house, if it be intended that things of a personal nature annexed to it should not be included, to make an express reservation of them. It is a common and convenient practice in the agree-

Peculiar circumstances only can exclude fixtures from passing under general conveyance of the freehold.

(g) 2 B. & C. 76.

(h) *England v. Downs*, 6 Jurist, 1075.

ment or deed to provide for the purchase of such articles at a valuation to be made in some manner agreed upon; the articles themselves being enumerated in an inventory, to preclude dispute as to what shall be reckoned as fixtures. If no such inventory be made, only such articles should be included in the valuation as would be reckoned assets as between heir and executor; and which would not therefore pass with the inheritance as part of the freehold.

Demise, with
clause for
valuation.

In the case of a demise, where it is provided that the fixtures are to be taken at a valuation, the incoming tenant would purchase only those things which are considered fixtures, as between landlord and tenant; and which the latter would have been held entitled to remove had he put them up during his term.

Assignment.

The rule is the same in the case of a tenant assigning his lease during the term and disposing of the fixtures to the assignee.

Where an incoming tenant, at the commencement of his term, purchases the fixtures of the landlord, he acquires a right and property in them under the contract of sale, quite distinct from that given to him by the general law; and if he fail to remove them during the term, he would not be considered to have abandoned his property in them, or lost the right of removal. Whether a contract for the sale of fixtures falls within the 4th section of the Statute of Frauds, as for "an interest in land," is an important question which appears never to have been raised or decided, until in a very recent case.

Effect of the
Statute of
Frauds.

Special
agreement
with an out-
going
tenant.

An outgoing tenant agreed a few days before his tenancy expired, at the request of his landlady, not to remove the fixtures, she engaging to take them at a valuation to be made by two brokers. The lease expired, and the tenant having quitted the premises without severing the fixtures, delivered up possession by sending the key to the landlady. On the following day the fixtures were valued by the two brokers at 40*l.* 10*s.*, and they signed the appraisement:—*Held*, that the matter bargained for was not a sale

of an interest in land within the 4th section of the Statute of Frauds, the plaintiff having, at the defendant's request, merely waived his right to remove the fixtures. Nor was any note in writing, &c., under the 17th section, required as for the sale of goods above the value of £10. But the value of the fixtures, although not severed, might be recovered in an action of *Indebitatus assumpsit*, for fixtures and effects bargained and sold, and sold and delivered (i).

Where the contract relates to a transfer of fixtures together with the land, it clearly falls within the 4th section of the statute; and the agreement for the sale, valuation, &c., must be in writing, and executed according to the formalities therein prescribed. If, however, fixtures be sold with a view to an immediate severance, or the contract be between parties who are unable to transfer any interest whatever in the land; as between an outgoing tenant at the expiration of his term, and the incoming tenant under a new demise; in such cases, it is evident, by reference to the decisions respecting timber and crops (k), and in accordance with the case last cited, that such a contract would not be held to fall within the 4th section of the statute, as it merely transfers the right to sever the fixtures from the freehold and convert them to chattels (l).

Agreements for sale of fixtures with land, should be in writing.

SECT. II.—*By Demise.*

UNDER a lease, fixtures, if not alluded to, pass to the tenant; but it is not uncommon, under certain circumstances, for the lease to demise the fixtures

Special demise of fixtures.

(i) *Hallen v. Runder*, 1 C. M. & R. 266; 3 Tyr. 959.

(k) *Parker v. Staniland*, 11 East, 362; *Mayfield v. Wadsley*, 3 B. & C. 357; *Smith v. Surman*, 9 B. & C. 561; *Sainsbury v. Matthews*, 4 M. & W. 343; S. C. 7 Dowl. 23.

(l) *Mayfield v. Wadsley*, 3 B. & C. 357; 5 D. & R. 224; *Evans v. Roberts*, 5 B. & C. 829; 8 D. & R. 611.

expressly with the house or land. Thus, where the value and importance of the fixtures is great,—as in collieries, mills, breweries, and other works of that description,—the plant, machinery, and fixed utensils are let together with the estate, and special terms are introduced into the leases (*m*). When fixtures are thus demised, the lessee has a special property in them during the term, so long as they continue annexed to the freehold, but if he sever them, his interest is immediately determined, and they revert at once to the landlord. The tenant's property in such articles is similar to that which he enjoys in trees growing upon the demised premises (*n*).

In default of special demise.

Landlord cannot remove fixtures during the term.

We have already seen (*o*), that a demise making no mention of fixtures, gives the tenant a right to the enjoyment of them during the tenancy, at the end of which they revert, of course, to the lessor. In such cases the landlord is unable to deprive the tenant of the use of the fixtures by removing them, nor can he insist on their being valued, or on any further consideration being paid for them. Even if the fixtures have been annexed by the tenant during a former term, and he neglects to remove them during the term, or takes a new lease, or makes a new agreement with his landlord, without reserving his right to remove the fixtures, they are regarded as part of the property demised, and must revert with the freehold to the landlord at the determination of the tenancy.

SECT. III.—*By Mortgage.*

Identity of mortgage and conveyance.

NOTWITHSTANDING some apparently conflicting de-

(*m*) See instances of this in *Storer v. Hunter*, 3 B. & C. 368 ; *Horn v. Baker*, 9 East, 215 ; *Duck v. Braddyl*, 1 M'Clelland, 219.

(*n*) *Farrant v. Thompson*, 5 B. & Ald. 826, per Justice Bayley.

(*o*) *Ante*, p. 239.

cisions (*p*), there is no valid reason for drawing any distinction between assignments by way of mortgage and ordinary conveyances. As in the latter, so also in the former, the transfer of the freehold, without mention of the chattels thereunto annexed, effectually passes the fixtures. A mortgage is, in truth, nothing but a redeemable purchase; and the same rule applies to it as to an ordinary sale. Hence, when the freehold passes by a mortgage deed, the adjuncts or appurtenances of the freehold pass also, unless they be either specially excluded; or, from the terms of the instrument, or the circumstances of the case, it can be gathered to have been the clear intention of the parties not to transfer them (*q*).

In the case of *Ryall v. Rolle* (*r*), it was decided that by a mortgage of the freehold fixed utensils would pass to the mortgagee. But whether the fixtures are included in the mortgage or not is a question of fact, to be decided from a consideration of all the circumstances of the case. In January 1797, several persons carried on business in partnership as calico printers; and in the same month certain premises, on which their works were principally carried on, were conveyed to one of the partners in fee. The conveyance mentioned the premises to consist, besides land, of dwelling-houses, machine-house, and other buildings and erections, and stated them to be then in the possession of the partner to whom they were conveyed, and another partner. Various buildings and machines were afterwards from time to time erected on the premises by the firm, for the purpose of extending the works. The whole was firmly fixed to the freehold, and stood on that part of the land which was con-

Ryall v. Rolle, fixed utensils pass to the mortgagee.

(*p*) See *ex parte Quincey*, 1 Atk. 477.

(*q*) As to the construction of mortgages in respect of fixtures, see *Hitchman v. Walton*, 4 M. & W. 409; *Langstaff v. Meagoe*, 2 B. & Ad. 167; and *Trappes v. Harter*, *post*.

(*r*) 1 Atk. 175.

Trappes v.
Harter.

veyed to one of the partners in 1797, but the part in question could be removed without material injury to the buildings. In the different stocktakings of the firm, the land and buildings were always valued and classed separately from the machinery and fixtures. In the part of the country where the premises were situated, machinery of this description was constantly bought and sold distinctly from the freehold. The freehold in the premises having been subsequently conveyed to two of the partners, they, in 1828, mortgaged them to the plaintiff's wife, under the description of all the messuages, dwelling-houses, lands and buildings therein mentioned; "and also all that and those the steam-engine, mill-gearing, fixed machinery, heavy gear to millwright work, and other matters and things, &c., then standing and being in and upon the thereby demised buildings, works and premises, which in any manner constituted fixtures and appendages to the freehold of the same or any part thereof." All the machinery, fixtures, &c., appeared to have been in the reputed ownership of the partners who carried on the works until 1831, when they became bankrupt, and the defendants were appointed their assignees. The plaintiff, who was the husband of the mortgagee, had inspected statements of the affairs of the partners, which treated the machinery as not included in the mortgage, and had made no objection to such statements. In the month of April, 1831, the assignees sold all the machinery and fixtures, with the exception of two steam-engines, two water-wheels, an iron flooring, and some other articles, and the greater part of them were removed by the purchasers. The articles claimed by the mortgagee were all firmly fixed to the freehold, in such a manner however, that they might easily be removed without material injury to themselves or to the buildings:—*Held*, that the machinery did not belong to the inheritance, but was part of the personal estate of the bankrupts; and that it passed to the assignees, and that the machinery in question was not

intended to pass, and did not pass to the mortgagee, under the mortgage deed (s).

In this case the court held, that the assignees were entitled to the fixed machinery in question. Having decided that it was not included in the mortgage deed, the title of the assignees was clear; and therefore whether they claimed the property as "goods and chattels in the order and disposition of the bankrupts," or as real estate, seems immaterial.

A lessee erected coke-ovens and other trade fixtures upon the demised premises, which he afterwards mortgaged by the following description:—

"All and several the barge-houses, piece or parcel of land, wharfs, and premises comprised in the indenture of lease, together with all ways, paths, passages, lights, easements, advantages, and appurtenances whatsoever to the said wharfs, barge-houses, and premises, belonging or in anywise appertaining."

The lessee became bankrupt:—*Held*, that the words of the mortgage-deed were sufficient to pass the coke-ovens and fixtures, and that the assignees had no claim to them (t). Under the mortgage of a mill:—*Held*, that the stones, tacklings, and implements necessary for working the mill, although moveable, passed to the mortgagee (u).

So, in the case of an equitable mortgage by the deposit of title-deeds, the chattels annexed to the freehold are considered part of the security. Thus, the bankrupt deposited with the petitioners, as security for a debt due to them, the title-deeds of certain premises, of which he was seised in fee. In the memorandum of deposit the premises were described as "the steam-mills, cottages, lands, buildings, and premises at Langthorpe; and it was deposed by the solicitor employed by the petitioners to draw up the memorandum, that it was not intended to include the machinery in the mortgage:—*Held*, nevertheless,

Ex parte Bentley.

Place v. Fagg.

Equitable mortgage of land &c., includes the fixtures.

(s) *Trappes v. Harter*, 2 C. & M. 153; 3 Tyr. 604.

(t) *Ex parte Bentley*, 6 Jur. 719.

(u) *Place v. Fagg*, 4 M. & R. 277.

that all fixtures and fixed machinery, whether erected before or after the deposit of the title-deeds, were included in the security (*v*).

SECT. IV.—*By Bequest.*

A party having no devisable interest in property, may yet devise his fixtures therein.

If a person has a devisable interest in a house, he may devise the fixtures annexed to it, and if he has no property in the house itself which he can dispose of by will, yet he may bequeath those chattels which have been affixed to it and which he may lawfully sever and remove (*x*).

Fixtures pass with devise of land,

Or of a house.

The devisee of the land is generally entitled to all the articles annexed to it, whether they have been affixed before or after the date of the demise, according to the legal maxim :—“ *quod ædificatur in aræâ legatû cedit legato.*” By the devise of a house, therefore, the fixtures will pass (*y*). So, everything constructively annexed to it will be considered as included, such as locks, keys, rings, &c. (*z*). If a mill be devised at the time one of the mill-stones is removed for a temporary purpose, such stone will pass to the devisee (*a*) ; for, in the eye of the law, it still remains parcel of the mill.

Fixtures pass also with devise of house, as between heir and executor.

It has been doubted whether the devisee of an estate would be entitled to claim the chattels annexed to it, if, as between heir and executor, they would go to the latter as part of the personal property of the deceased ; for, it has been argued, the devisee takes the estate in the same condition as it would have descended to the heir. But notwithstanding the general accuracy of this proposition, it may be safely concluded, that a devise of the house would

(*v*) *Ex parte Price*, 6 Jur. 327.

(*x*) *Shep. Touch.* 340, 322.

(*y*) *Shep. Touch.* 469, 470 ; 4 Co. 62. *Herlakenden's Case* ; and see *Colegrave v. Dias Santos*, 2 B. & C. 80.

(*z*) 11 Co. 50, *Lilford's Case*.

(*a*) 6 Mod. 187.

pass the fixtures, no less certainly than a devise of the land would include the buildings upon it. A devise is but a mode of conveyance, and will be construed with reference to the same principles as those which govern other instruments of transfer. Indeed, there is an analogy in support of this view, which must not be overlooked, in the instance of emblements, which go to the devisee of the land, although the executor, and not the heir, would have been entitled to them, if the estate had descended upon the latter (*b*).

The main question, however, in the construction of bequests, is the intention of the testator; and if that can be gathered from the words which he has used, it will be carried out as far as it is practicable.

Therefore, although the devisee would take emblements as against the executor, yet as against the legatee of all the personal estate he would not be entitled (*c*), for it would be contrary to the manifest intention of the testator to pass property by implication against the express words of a bequest. A similar rule must by analogy be observed in relation to fixtures.

But, although by a bequest of a house &c., silent on the subject of fixtures, the fixtures in that house (whether freehold or leasehold,) would pass with the property itself; yet if the bequest be of the house and certain enumerated fixtures, all fixtures other than those so enumerated would be excluded from the bequest by that very enumeration, which would be taken to be also an act of exception (*d*).

Fixtures, however, will not pass under the word "furniture" in a devise, even although they be articles of mere ornament. Therefore, where a testator gave, *inter alia*, "*furniture, jewels, &c.*," the

A special enumeration of fixtures in bequest, excepts those not specified.

The word "furniture" in a devise does not include fixtures.

(*b*) 1 Roll. 89, 727.

(*c*) *Cox v. Godsalve*, 6 East, 604, n.; *West & Anor. Exors. v. Moore*, 8 East, 335; *Vaisey v. Reynolds*, 5 Russ. 12.

(*d*) *Hare v. Horton*, 2 N. & M. 428; 5 B. & Ad. 715.

devisee was held not entitled, as against the heir, to marble slabs and chimney-pieces fixed to the freehold, on an estate of which the testator was owner in fee, although he was entitled to similar articles affixed to a house of which he was tenant for years (*e*). The distinction seems to be that, in the latter case, the articles may be considered to partake more of the nature of personalty, because the testator has only a chattel interest in the estate itself. But under any circumstances, it is clear that the heir could not be entitled to the fixtures in the leasehold house, and therefore the case does not decide that articles of the kind alluded to will pass under the word "furniture" (*f*). Nor will a clock affixed to the house, pass under the term "household goods" (*g*).

Bequest of fixed furniture.

Under bequests of fixtures and fixed furniture to *A.*, and of household goods, furniture, plate, &c. to *B.*, *A.* is entitled to chimney-glasses and book-cases fastened by screws and brackets to the walls of the house, as fixed furniture (*h*).

Bequest of fixed furniture, carries furniture affixed in any manner.

Under a bequest of a leasehold house with the grates, stoves, coppers, locks, bolts, keys, bells, and other fixtures and fixed furniture therein, chimney-glasses fastened by a nail on each side, and book-cases fixed to the wall by means of brackets and screws, will pass (*i*).

But a book-case merely placed in the wall, and not screwed nor fastened to the wall, is not fixed furniture (*k*).

Under bequest of household furniture, fixtures in a leasehold will pass.

Under a bequest of household furniture, fixtures belonging to the testator, in a leasehold house occupied by him, will pass (*l*).

(*e*) *Allen v. Allen*, Mosely 112.

(*f*) But see *Palan v. Shepherd*, post.

(*g*) *Slanning v. Style*, 3 P. Wms. 334.

(*h*) *Birch v. Dawson*, 4 Nev. & M. 22; 2 Ad. & E. 37; 6 Car. & P. 658.

(*i*) *Ibid.*

(*k*) *Ibid.*

(*l*) *Palan v. Shepherd*, 10 Sim. 186.

A testator having directed that his household furniture, &c., and utensils in and about his mansion-house at *H.*, should go with the mansion-house, and that, for that purpose, his trustees should make an inventory of the furniture, &c., and utensils which should be found in and about his mansion-house and premises at the time of his decease; these words did not pass farming utensils on lands at *H.* occupied by the testator along with the mansion-house (*m*).

Under devise of furniture and utensils, &c. of a mansion-house, farming utensils will not pass.

In endeavouring to ascertain the intention of a testator, as to whether things affixed pass by devise of the estate, it may be frequently important to consider whether or not the articles have been used together with the premises during the lifetime of the party. If they have been so used, the circumstance may be regarded as indicative of an intention to give them to the devisee of the estate.

Considerations in determining the intentions of testator.

Therefore, where a testator devised his copyhold estate, consisting of a brewhouse and malthouse; under this devise the plant of the brewhouse was held to pass with the brewhouse itself, although there was a bequest of the personal estate to another (*n*).

(*m*) *Fitzgerald v. Field*, 1 Russ. 427.

(*n*) *Wood v. Gaynon*, Amb. 395. And see upon this subject, 3 Wils. 141; 1 B. & P. 53; 2 T. R. 498; 2 Bing 456; 1 B. & C. 350.

CHAPTER VIII.

RATEABILITY OF FIXTURES.

Fixtures
rateable, if
affixed to
rateable pro-
perty.

WHEREVER lands or houses rateable for the support of the poor, are improved in annual value by the annexation of personal chattels, they will be liable to be assessed at that increased value. Thus, where a corporation, being possessed of a house, erected a machine outside of it for the purpose of weighing waggons, carts, &c. loaded with coal, &c. at 2*d.* per ton, the steel-yard of the said machine being in the house, the corporation was rated for the machine-house according to the annual value not only of the house itself, but of the clear profits of the machine. The court held the rate good, for the very nature of the thing showed it was part of the freehold; the steel-yard being the most valuable part of the house,—the house applied to this use might therefore be said rather to be built for the steel-yard, than the steel-yard for the house. It was also said, that if the machine be appurtenant to the building, the clear profits are undoubtedly rateable. If a billiard-table stand in a house, and the house should, in respect of such table, be let at a higher sum, it would be rateable at an advanced rate (*a*), so long as the table continued there.

So, a house and engine for carding cotton, which were rented as one entire subject, and described by the general name of an engine-house, were rateable to the poor (*b*).

Moveable
chattels not
rateable.

Those chattels, however, which thus increase the annual value of the property must be affixed to the

(*a*) *Rex v. St. Nicholas, Gloucester*, Cald. 262, 1 T. R. 723, note.

(*b*) *Rex v. Hogg*, 1 T. R. 721; Cald. 266.

hold, and not be mere moveable goods. It is also essential that the estate itself should be rateable, in order to make the accessory rateable (c).

Things annexed to the land, which produce a profit to the proprietors, are rateable, notwithstanding the ownership of the land itself may be in other individuals. Thus, pipes laid down and fixed in the ground, are deemed a part of the soil, and are rateable as such in the parish in which they are situated, according to the profits derived from the pipes in the conveyance of water or gas (d). And this, although the surface of the land is already rated on another account. Thus, where the ranger of a royal park was rated for the herbage growing thereon, the proprietors of a company deriving a profit from certain reservoirs and pipes constructed and laid down under the provisions of an Act of Parliament, therein, were also held liable as occupiers for the reservoirs, and also for the occupation of land below the surface of the soil by their pipes (e).

Things annexed to the soil are rateable in addition to the soil.

In order to confer a settlement, the property by which the annual value of the land is improved must be actually affixed to the soil (f). Therefore a post windmill built upon cross-braces laid upon brickwork, but not let into or fastened to it, although it added to the value of the premises, did not avail to confer a settlement, not being a "tenement" within the meaning of the Act of Parliament.

Fixtures be rateable must be permanently affixed.

Where fixtures have been annexed to the land by a pauper, no settlement can be gained in respect of the improved value; for, inasmuch as the fixtures belong to the tenant, they cannot be

Fixtures annexed by a pauper tenant, not rateable.

(c) *Rex v. Bilston*, 5 B. & C. 851; 8 D. & R. 734.

(d) *Rex v. Rochdale Waterworks Company*, 1 M. & S. 634; and *Rex v. Brighton Gas Company*, 8 D. & R. 308; 5 B. & C. 466.

(e) *Rex v. Chelsea Waterworks Company*, 2 N. & M. 767; 5 B. & Ad. 156.

(f) *Rex v. Londonthorpe*, 8 T. R. 377.

said to be a tenement or thing holden of another (*g*).

Rateable value increased by fixtures, will confer a right of voting. Premises which are increased in value by the annexation of fixtures, will confer a right to vote in the election of members of Parliament, by reason of such improved value (*h*).

(*g*) *Rex v. Inhab. of Ottley*, 1 B. & Ad. 161; and *Gibb. Fix.* 60.

(*h*) 2 *Luders*, 440, *Bedford Election*.

CHAPTER IX.

VALUATION OF FIXTURES.

A WRITTEN appraisement of fixtures requires to be stamped according to the provisions of 55 Geo. III. c. 184, by which the following duties are imposed: Appraisement of fixtures must be stamped. if the amount of the valuation does not exceed £50, a duty of 2s. 6d.; where it exceeds £50 but does not exceed £100, a duty of 5s.; where it exceeds £100 but does not exceed £200, a duty of 10s.; where it exceeds £200 but does not exceed £500, a duty of 15s.; and where it exceeds £500, a duty of £1.

Where the appraisement has no object but the Exemption. private information of the party directing it, and is not designed to be obligatory as a contract, no appraisement stamp is necessary (a).

An inventory of fixtures appraised and signed by Appraisement signed by brokers is evidence. brokers appointed for that purpose by the parties, is evidence in an action brought to recover their value, on an account stated (b), but it must be stamped.

A written agreement between parties for the sale Agreement for sale of fixtures must be stamped. and purchase of fixtures, requires an agreement stamp if they amount to £20. The stamp duty is, by 7 Vic. c. 21, now reduced to 2s. 6d. (c).

Fixtures are also liable to an auction duty of 1s. Fixtures liable to auction duty. in the pound, the same as goods and chattels (d).

If, on the demise of a house, it be agreed between Valuation between landlord and tenant on commencement of the term. the landlord and tenant that the fixtures shall be taken at a valuation, the appraiser should value those only which a tenant would have been entitled

(a) *Atkinson & Another v. Fell & Another*, 5 M. & S. 240.

(b) *Salmon v. Watson*, 4 Moo. 73.

(c) *Wick v. Hodgson*, 12 Moo. 213.

(d) 43 Geo. III. c. 69; 45 Geo. III. c. 30.

to remove had he put them up himself during the term.

At expiration
of the term.

If, by a covenant in the lease, the landlord agree to make an allowance for the fixtures at the end of the term, those only should be included which the tenant purchased of the lessor on entering upon the premises; and not those which the tenant may choose to affix during the continuance of the term. The appraiser should, however, in all cases, endeavour to act up to the spirit and intention of the parties to the agreement, whatever it may be.

Valuation be-
tween out-
going and in-
coming ten-
ants.

As between outgoing and incoming tenants, all those fixtures should be valued to the latter which the former might have removed during the term; and it makes no difference whether they were purchased of the landlord or were afterwards added by the tenant. But nothing which the tenant was precluded from removing either by the general law of fixtures, or by the special terms of the lease, can be appraised or sold to the incoming tenant, for at the expiration of the lease, all such articles become the property of the landlord.

Lease silent
as to fixtures
includes
their use.

If the landlord demise a house without making any mention of fixtures they will be considered as included, and he will not be allowed to recover any compensation for them, either by addition to the rent or by way of sale (e).

(e) *Thresher v. East Lond. Wat. W. Co.*, 2 B. & C. 608.

CHAPTER X.

DILAPIDATION OF FIXTURES.

THAT fixtures put up by the tenant and removable by him, are not subject to claims for dilapidation is evident, since the consequences of his own neglect fall, as they fairly should do, on himself.

In other respects, however, fixtures are as much liable to claims for dilapidation as any other portion of the property of which they form a part. A lessor therefore has the same claim against his lessee for dilapidation of fixtures, scheduled in the lease, or otherwise clearly established to be his (the lessor's) property, as for dilapidation in respect of any other matter or thing.

As this subject will be more fully treated under its proper head, we must refer our readers to the Article "DILAPIDATIONS," merely repeating the rule, that the rights of a landlord or lessor, in respect of dilapidations of his fixtures are commensurate with, and in proportion to, his rights in respect of other portions of the premises to which such fixtures are attached. We have already seen that a general covenant to repair will include things affixed to the freehold by the tenant during his term, for the convenience of trade, or otherwise (*a*).

(*a*) *Ante*, Chap. IV., Section I., p. 214.

CHAPTER XI.

REMEDIES BY ACTION AND OTHERWISE IN RESPECT
OF FIXTURES.

THE earliest remedy given to remainder-men and reversioners for any injury to the freehold was by the common-law writ of waste. This however was limited in its application, extending only to tenancy by the curtesy, tenancy in dower, and guardianship in chivalry, and quite (*a*) inadequate to the protection of parties whose interests were liable to be affected by the acts of those who might be in possession of estates. Hence, in very early times statutes were passed (*b*), giving a right of action against tenants for life or years, or *pour auter vie*, and against the assignees of such tenants for waste committed after the assignment. By an equitable construction of these statutes, tenants from year to year or for part of a year, were held punishable for waste (*c*). The action of waste thus given by the common law and extended by statute was, however, with all other real or mixed actions, abolished by the 3 & 4 W. IV. c. 27, s. 36. We pass therefore, at once, to the consideration of those other remedies at law, and in equity, of which the parties injured by a waste of the estate may avail themselves. It will perhaps be convenient to consider, in the first place, the equitable relief afforded under certain circumstances, inasmuch as it is rather preventive than remedial or corrective.

(*a*) 2 Inst. 145 ; Co. Litt. 53, a. et sqq.

(*b*) 52 Hen. III. c. 23 ; 6 Edw. I. c. 5.

(*c*) Vin. Ab. Vol. 22, Waste, (Serjeant Hill's *note*.)

SECT. I.—*By Injunction.*

IT may frequently happen that irreparable mischief ^{Injunction to restrain.} may be done to the estate by the person in possession, before the result of an action at law can be ascertained. In such cases the court of Chancery, on sufficient cause being shown, will interfere by injunction to restrain the tenant from committing waste on the premises demised. Application is generally made ^{To whom, and against whom granted.} by the owner of the inheritance whose reversionary interest would be affected by the wrongful act of the tenant, and the interposition of the court is founded on the privity of estate between tenant and reversioner. On some occasions, however, the court will grant an injunction where this privity is wanting, and the act complained of is a mere trespass (*d*). In all cases the court must be satisfied that the property in dispute is actually affixed to the freehold; and in the absence of very clear proof to that effect will refuse to interfere summarily by injunction (*e*).

If waste has already been committed, the court, ^{Account.} besides granting an injunction to restrain the tenant from proceeding further, will also grant an account, if the damages be not readily ascertainable, as where ore has been dug from mines (*f*). If the injury be simple, and the damages can be computed without difficulty, the party will be left to his remedy at law.

Injunctions may be granted in the case of ecclesiastical persons to restrain them from committing ^{Injunctions in the case of ecclesiastical persons.} waste; as against a rector at the suit of a patron (*g*); or against the widow of a rector at the suit of a patroness during a vacancy (*h*). Bishops, deans, and

(*d*) 3 Atk. 21; 1 Br. Ch. Cas. 588; 6 Ves. 147; 7 Ves. 308; 10 Ves. 290; 17 Ves. 128, 138, 281; Dick. 670; Swans. 208.

(*e*) *Kimpton v. Eve*, 2 Ves. & B. 349.

(*f*) *Bp. of Winch. v. Knight*, 1 P. Wms. 406.

(*g*) 2 Atk. 217; Barn. 399; S. C. Amb. 176; 1 Bos. & P. 119.

(*h*) 2 Br. Cha. Cas. 552.

collegiate and ecclesiastical bodies, may also be restrained by injunction at the suit of the crown (*i*).

Variation in
forms of
injunction.

The relief obtained by application to the court of Chancery may be afforded in other forms besides that of an injunction to stay waste. For example, by injunction to restrain a breach of covenant; or by a decree to account, &c.

SECT. II.—*By Action.*

Remedies by
action.

THERE are two descriptions of remedy by action in respect of fixtures, depending partly on the relative situations of the litigant parties, and partly on the view which the plaintiff takes of the injury which he has suffered. Thus, the landlord may bring an action against the tenant, or against a stranger for severing the fixtures (*k*); or the tenant may bring an action for a similar cause against the landlord or a stranger. Again, the party complaining may treat the wrongful act either as a breach of contract, or as a trespass, and vary his form of action accordingly. Thus, where an incoming tenant agrees to purchase the fixtures at a valuation either of the landlord or of the outgoing-tenant, and takes possession of them, and afterwards refuses to pay, an action of *indebitatus assumpsit* will lie at the suit of the vendor to recover the value. But the price of fixtures in a house cannot be recovered under a count for goods sold and delivered (*l*). It was held however in a late case, that a declaration in trespass for goods, chattels and effects, was supported by evidence of taking fixtures under a distress for rent (*m*).

Special de-
claration.

Under certain circumstances the plaintiff must declare specially. Thus, by an agreement between

(*i*) Amb. 176; 3 Mer. 427.

(*k*) *Harrison v. Parker*, 6 East, 154.

(*l*) *Nutt v. Butler*, 5 Esp. 176; *Ellenboro.*; *Lee v. Risdon*, 7 Taun. 188; 2 Marsh. 495; *Hallen v. Runder*, 1 C. M. & R. 266; 3 Tyr. 959; *Horn v. Baker*, 9 East, 215.

(*m*) *Pitt v. Shew*, 4 B. & Ald. 206.

the plaintiffs and defendant, the defendant was to accept of the assignment of the lease of a farm from the plaintiffs, and to take the fixtures and crops at a valuation ; he was afterwards let into possession of the fixtures, and the crops were valued to him ; but the lease was never assigned :—*Held*, that *indebitatus assumpsit* would not lie for the price of the crops and fixtures, and that the plaintiff's only remedy was by a special action on the agreement (*n*).

The price and value of fixtures may sometimes be recovered under a count on an account stated. The defendant agreed verbally with the plaintiff to take a house, and purchase the fixtures at a valuation to be made by two brokers. An inventory of the furniture and fixtures was accordingly made, described generally as “an inventory of the fixtures,” &c., with the gross amount placed at the foot thereof. In an action for goods sold and delivered with a count on an account stated, it was held, that the defendant having taken possession of and enjoyed the furniture and fixtures, and paid part of the sum determined by the brokers to be due for the same, he was liable on the account stated for the remainder (*o*).

Action on
account
stated.

If the tenant wrongfully sever the fixtures during the term, the landlord may maintain an action on the case in the nature of waste, for the injury thereby done to his reversionary interest ; and so also, if a stranger sever a fixture, or do any other act permanently injurious to the inheritance (*p*). In addition to this remedy for the damage sustained by him as reversioner, the landlord may also maintain trover to recover the value of the fixtures when severed ; or may sue in *detinue* to recover possession of the things themselves and damages for the detention ; for at the instant of severance, the tenant's qualified property in them determined, and they became the

Wrongful
severance.

(*n*) *Neale v. Viney*, 1 Camp. 471.

(*o*) *Salmon v. Watson*, 4 Moore, 73.

(*p*) *Jackson v. Pesked*, 1 M. & S. 234.

Trover.

absolute property of the lessor (*q*). Where a lessee for years mortgaged his lease, and all his estate and interest in the premises, and afterwards became bankrupt; it was decided that the mortgagee might declare in case as reversioner against the assignee of the tenant for the removal of the fixtures from the premises, whereby they were dilapidated and injured; and that he was also entitled to recover in trover against such assignee, the value of all the fixtures whether landlord's or tenant's, which were affixed to the premises before the execution of the mortgage; although there was a covenant in the original lease to the mortgagor to yield up to the lessor at the determination of the term, "all fixtures and things to the premises belonging or to belong" (*r*). But trover will not lie for fixtures until after their severance from the freehold, when they become personal chattels (*s*). Therefore, if a tenant omit to detach the fixtures during his term or possession, he loses his right to them, and cannot afterwards treat them as chattels in an action of trover brought against the sheriff for taking them under a writ of *fi. fa.* Accordingly, where the lessee of certain collieries assigned goods and chattels, and engines partly affixed to the freehold, to the plaintiffs, and the lessor afterwards took possession of the collieries by reason of a forfeiture: it was held, that the plaintiffs could not maintain an action of trover against the sheriff, who had taken the engines under a *fi. fa.* against the lessee, inasmuch as the latter had not detached them during the continuance of his possession (*t*).

Action of
trespass by
landlord.

The landlord may also maintain trespass *de bonis asportatis*, against the tenant or a stranger, if fixtures belonging to him be wrongfully severed from the freehold. If the severance and the carrying away

(*q*) *Farrant v. Thompson*, 5 B. & Ald. 826.

(*r*) *Hitchman v. Walton*, 4 M. & W. 409; 1 Horn & H. 374.

(*s*) *Ex parte Quincey*, 1 Atk. 478; *Davis v. Jones*, 2 B. & Ald. 165.

(*t*) *M'Kintosh v. Trotter*, 3 M. & W. 184.

were one continued act, it has been doubted (*u*) whether an action in this form could be maintained; but, as has been well argued (*x*), the property in the chattel vests in the landlord at the very instant of severance, and the severance itself is, of necessity, an asportation, and “whether the wrong-doer carry the fixture an inch, a yard, or a mile, after having severed it, can make no difference in principle.”

The tenant may also maintain an action in the same form, if the landlord or a stranger disannex and carry away fixtures belonging to him (*y*). Action of trespass by tenant.

Where a landlord demises a house together with certain chattels, as in the case of a furnished house, he cannot during the term sue either in trespass or trover for a conversion of the furniture (*z*). And if a party takes forcible possession of a house and fixtures, but does not sever the fixtures, he cannot be sued in trover for having converted the fixtures (*a*). Lessor cannot sue in trespass or trover during term.

(*u*) *Udal v. Udal*, Aleyn. 82.

(*x*) Gibbons on Fixtures, p. 64.

(*y*) *Twigg v. Potts*, 1 C. M. & R. 89; 3 Tyr. 969.

(*z*) *Ward v. Macauley*, 4 T. R. 489; *Gordon v. Harper*, 5 T. R. 9

(*a*) *Longstaff v. Meagoe*, 4 N. & M. 213.

CHAPTER XII.

CRIMINAL PROCEEDINGS IN RESPECT OF FIXTURES.

CHATELS affixed to the freehold may be either stolen or maliciously injured, and the law has provided for their protection in both these respects by affixing suitable penalties for the punishment of those who either feloniously appropriate property of this description, or wantonly and wickedly injure it.

SECT. I.—*For Stealing Fixtures.*

Stealing of
fixtures, a
felony.

BY 7 & 8 Geo. IV. c. 29, s. 44, "If any person shall steal, or rip, or cut, or break, with intent to steal any glass, or wood-work, belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil, or fixture, whether made of metal or other material, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing being fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person."

Removal of
fixtures.

At common law, larceny could not be committed of things that savoured of or adhered to the freehold, as fixtures; for they were considered part of the land, which could not be the subject of theft (*a*).

(*a*) 1 Hale P. C. 510; 2 East, P. C. 587.

Yet if severed from the freehold at one time and removed at another, the removal was a felony, for they were personal goods after the severance. The rule on this subject is thus stated by the criminal law commissioners: "Although a thing be part of the realty, or be any annexation to, or unsevered produce of the realty, yet if any person sever it from the realty with intent to steal it, after an interval, which so separates the acts of severance and removal that they cannot be considered as one continued act, the thing taken is a chattel, the subject of theft, notwithstanding such previous connexion with the realty. If any parcel of the realty or any annexation to, or unsevered produce of the realty be severed, otherwise than by one who afterwards removes the same, it is the subject of theft, notwithstanding it be stolen instantly after that severance" (b). Rule on this subject.

To remedy the inconvenience which arose from this state of the law, it has been made larceny in certain cases to steal things annexed to a part of the freehold, by the enactment above cited. Under that section of the Act, all persons convicted of severing and removing, though without any interval between the severance and removal of any articles affixed to the freehold, are to be deemed guilty of larceny, and to be punished in the same manner as those found guilty of that offence at common law. Where a person obtained possession of a house, fraudulently and with intent to steal fixtures, under a written agreement for twenty-one years' lease, it was held that he was guilty of felony in stripping the lead from the house (c). Removal of fixtures in some case larceny.

SECT. II.—*For breaking or destroying Fixtures.*

THERE are certain classes of fixtures which the law has jealously protected against malicious injury, by Malicious damaging of fixtures, a felony.

(b) Report, p. 11.

(c) *Rex v. Munday*, 2 Leach, 859; 2 East's P. C. 594.

Transportation or imprisonment.

Parties damaging machines employed in manufacture, liable to transportation.

Also for damaging any steam or other engine employed in mines.

many statutes which are now repealed; and the following provisions, substituted by the 7 & 8 Geo. IV. c. 30, s. 3, which enacts that, "If any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any loom, frame, machine, engine, rack, tackle or implement, whether fixed or movable," (used for the purposes of silk, woollen, linen, or cotton manufacture) "or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment."

By section 4, of the same Act, similar offences committed in respect of "any machine or engine, whether fixed or movable, prepared for or employed in any manufacture whatever," (except those provided for in the section cited above), are punishable with transportation for seven years, or imprisonment for any term not exceeding two years, and whipping, at the discretion of the court as above.

A similar punishment is awarded by the 7th section of the Act, for maliciously damaging or destroying "any steam-engine, or other engine for working a mine," &c.

Under these and similar sections of the Act, it has been held that the offence is within the statute, although at the time some portion of the machine or engine was deficient, provided it was capable of being worked without it (*d*), or the other parts might be readily added (*e*). So, also, the parties may

(*d*) *Bartlett's Case*, 3 Deac. Dig. C. L. 1517, and *Chubb's Case*, *Id.* 151.

(*e*) *Fidler's Case*, 4 C. & P. 449.

be convicted, although at the time of the offence committed the machine had been taken to pieces, and was in different places; but only requiring the carpenter to put those pieces together again (*f*).

Where, however, the owner had not only taken the machine to pieces, but had broken the wheel without which it could not be worked, this was held to take the case out of the statute (*g*).

These cases were decided on that section which includes threshing-machines, and were cases where the offence was committed in respect of such machines; but the principle will apply to all other machines and engines.

It is obvious that the machinery protected by the different clauses of this Act, may, or may not be so annexed to the freehold, as to fall within the legal definition of a fixture. As far as, in any case, it is so annexed, so far the criminal law which applies to it falls within the scope of this treatise.

SECT. III.—*Of Deodands.*

ANY personal chattel which has occasioned the death of a person is by the English law forfeited to the crown. But whilst any thing remains affixed to the freehold, it is not a personal chattel; if, therefore, any such article should occasion the death of a party, it will not be forfeited. Thus, a man was drawn up and strangled by the rope while ringing a church bell; but the bell, being parcel of the freehold, was not forfeited (*h*).

In a similar manner, the sail of a windmill, the wheel of a forge or mill, or a mill-stone, occasioning death, cannot be accounted as a deodand (*i*).

(*f*) *Mackarel's Case*, 4 C. & P. 448.

(*g*) *West's Case*, 2 Deac. Dig. C. L. 1518.

(*h*) *Axminster Parish Case*, 1 Sid. 207; 1 Leon. 136; S. C. 1 Keb. 723, 745.

(*i*) 6 Mod. 187; Sir T. Ray. 97; 3 Inst. 57; Keb. 745.

If, however, the fixture be severed from the freehold before it occasion the death, it will be forfeited. Thus, if a bell fall from a steeple, or a millstone from a mill, and kill any one in its descent, it will be forfeited as a deodand, for it became a chattel from the moment of its severance (*k*).

(*k*) 1 Keb. 723.

SCHEDULE, No. I.

Fixtures not Removable by the Tenant, although annexed to the Freehold, or renewed by him.

AGRICULTURAL BUILDINGS.

ALE-HOUSE BAR (*a*).BARNs, SUBSTANTIALLY AFFIXED (*b*).

BEAST-HOUSES.

BENCHES AFFIXED, AS IN A TAP-ROOM.

BINNS, and BINN DIVISIONS OF BRICKWORK.

Box planted in a garden.

BRICKS, laid in mortar or cement.

CARPENTER'S SHOP.

CART-HOUSES.

CELLAR BINNS, divisions, and shelves, built of brickwork.

CHIMNEY-PIECES, original (*c*).

CONSERVATORIES.

CORNICES, substantially affixed, or worked in plaster, cement, or stone, and as accessories to other work.

COW-SHEDS.

CUCUMBER FRAMES, substantially affixed.

CUPBOARDS, let into the floor or walls, or nailed to standfasts which are so let in.

DAIRY-SHELVES and PILLARS of brickwork.

DOORS.

DRESSERS.

FASTENINGS to gates, &c.

FENCES, living.

(*a*) The pewtering on the bar-counter and other bar and counter-fixtures and fittings are removable.

(*b*) The term "substantially affixed" is used throughout these schedules, to imply fixtures for which foundations have been opened, or for the reception of which the freehold, whether of soil, or bricks, or wood, or stone, has been broken or cut into; or, where the fixture is affixed by mortar, cement, cramps, standards, standfasts, or some other permanent setting.

(*c*) That is to say, "the original chimney-piece." An original chimney-piece of stone may be replaced by one of marble; but the tenant must restore the original one in good condition; or in default of so restoring it, or if there have been no "original" chimney-piece, he must leave that which he has put up.

- Schedule,*
 No. 1.
- FENCES, dead, if substantially affixed, as post and rail, &c.
 - FLOWERS planted, not in pots.
 - FOLDYARD WALLS and GATES.
 - FRUIT-TREES, standard, planted for other than nursery purposes ; or purposes of sale.
 - FRUIT-TREES trained against a wall.
 - FUEL HOUSE.
 - GARDEN FRAMES, substantially affixed.
 - GIBS, or JIBS.
 - GIBDOORS.
 - GLASS-WINDOWS.
 - HAY-RACKS.
 - HEARTHES, both front and back.
 - HEDGES.
 - HEN-HOUSE.
 - HINGES of doors, not removable.
 - JIBS, or GIBS.
 - KEYS, provided with the premises demised.
 - LATCHES, ditto.
 - LOCKS, and lock-furniture ditto.
 - MACHINERY, forming a substantial part and parcel of the freehold, as in a corn-mill.
 - MANGERS.
 - MILLSTONES.
 - MELON-FRAMES, substantially affixed.
 - PARTITIONS of every kind.
 - PAVEMENTS (a).
 - PIGEON-HOUSES.
 - PIGGERIES.
 - PINERIES, substantially affixed.
 - PUMP-HOUSES, or HOUSINGS.
 - RACKS.
 - RINGS.
 - SHUTTERS.
 - SLABS, necessary to the freehold ; such as the slab in front of the grate, &c.
 - STRAWBERRY-BEDS.
 - TOWER WINDMILLS.
 - VERANDAHS, substantially affixed.
 - VENTILATORS.
 - WAGGON-HOUSES.
 - WAINSCOT, substantially affixed.
 - WELLS.
 - WELL-COVERINGS, or HOUSINGS.
 - WINDOWS.

(a) Some pavements are removable in a few extraordinary cases, such as where a party lays down a false tessellated pavement or floor, over the common, or substantial pavement, &c. But no pavement can be removed which in its removal would damage or disturb the freehold.

SCHEDULE, No. II.

Fixtures Removable by the Tenant, if annexed by him.

ACCESSARY BUILDINGS (a).

AGRICULTURAL MACHINES, as threshing machines, &c.

APPARATUS for heating houses, &c.

APPARATUS for making soda, and mineral-waters, &c., for drawing beer; or for any other trade purposes.

ARRAS HANGINGS.

AVIARIES.

BACKS in breweries, distilleries, &c.

BACKS (IRON) of chimneys.

BAIZE-DOORS.

BAR-FITTINGS in public-houses.

BARNs built on frames, rollers, blocks, pattens, piers, or wheels; or otherwise than substantially affixed (b).

BARS—as iron guard-bars, to doors, windows, &c.

BATHS, and their accessories, as supply and waste-pipes, &c.

BEDS—although fastened to the wall, floor, or ceiling.

BEER ENGINES.

BELLS, with their wires, cranks, carriages, pulleys, levers, &c.

BELL-PULLS.

BELL-WIRES.

BINN, BINN DIVISIONS, and BINN-SHELVES, made of wood, slate, or stone; or otherwise than of bricks and mortar.

BLINDS—both exterior and interior; and spring and other blind rollers, laths, and pulleys.

BOOK-CASES.

BOOK-SHELVES.

BOTTLE RACKS.

BRACKETS.

BREWERY PLANT.

BREWING BACKS.

BREWING VESSELS—vats, coppers, pipes, tubs, &c.

BRICK-KILNS, and sheds used in the manufacture of bricks on the premises demised.

BUILDINGS merely accessory to any removable fixture; or themselves built on frames, rollers, blocks, pattens, piers, or wheels; or otherwise than substantially affixed (b).

(a) That is to say, such buildings as are purely accessory to the use of a removable fixture.

(b) For a definition of the term “substantially affixed,” see *ante*, Schedule I., note (b), page 265.

Schedule, CABINETS.
No. 2. CASINGS.

CELLAR FITTINGS, (*See* BINNS).

CHEESE PRESSES.

CHIMNEY BACKS (iron).

CHIMNEY-PIECES (ornamental).

CHIMNEY-GLASSES.

CIDER-MILLS.

CIDER-PRESSES.

CISTERNS, with their pipes, &c.

COLLIERY ENGINES.

COLLIERY IMPLEMENTS.

COLLIERY MACHINES.

COLLIERY PLANT.

CLOCK-CASES.

CLOSETS.

COFFEE-MILLS.

COOLING COPPERS.

COPPERS.

CORNICES (ornamental).—(*See* Schedule, No. I.)

COVINGS.

COUNTERS.

CRANES.

CRANKS to bells.

CUPBOARDS, affixed by crews, or holdfasts not let into the walls or floor.

DAIRY FITTINGS, other than of bricks or mortar.

DESKS.

DISTILLERY BACKS.

DISTILLERY PLANT.

DISTILLERY PIPES.

DOORS, supplementary ; as baize doors, nursery gates, &c.

DRAWERS.

DUTCH BARNs.

ENGINES, employed in any trade to which the premises demised have been appropriated.

ENGINE-HOUSES built to contain such engines.

EYES, as of hooks-and-eyes, stair-eyes, &c.

FASTENINGS.

FINGER-PLATES.

FIRE-ENGINES, in collieries, and their sheds or houses.

FIRE-GUARDS.

FITTINGS of public-house counters.

FITTINGS of warehouses, safes, strong rooms, &c.

FITTINGS of shops.

FITTED FURNITURE.

FLOWERS, planted for sale or nursery purposes.

FLOWERS, in pots.

FLOWER-BASKETS, of wood or iron.

Schedule,
No. 2.

FLOWER-BOXES, of wood or iron.
 FORCE-PUMP, and pipes.
 FURNACES, used in trade.
 GAS FITTINGS.
 GASOMETERS.
 GAS APPARATUS.
 GAS PIPES (interior).
 GLASS SHOP FRONTS.
 GLASSES in nursery-grounds.
 GLASS FRAMES, ditto.
 GOLD MOULDINGS (ornamental).
 GRANARIES, on frames, rollers, blocks, pattens, piers, or wheels ; or otherwise than substantially affixed.
 GRATES.
 GRATINGS, not necessary to the freehold—as hot-air gratings, &c.
 GUARD-BARS, not necessary to the freehold.
 GUARDS—of wire, for grates, &c.
 HANGINGS, as tapestry, arras, &c.
 HAT PEGS.
 HAT RAILS, with their pins or pegs.
 HEATING APPARATUS.
 HINGES of baize doors, gates, &c., themselves removable.
 HOOKS.
 HYDRAULIC APPARATUS.
 HYDRAULIC PRESSES.
 IMPLEMENTS employed for trading purposes.
 IRON BACKS in breweries, distilleries, &c.
 IRON BACKS to chimneys.
 IRON BOILERS.
 IRON CHESTS.
 IRON GUARDS, GUARD BARS, or RAILS.
 IRON MALT-MILLS.
 IRON OVENS.
 IRON ROLLERS in mills, &c.
 IRON SAFES, frames, shelves, and strong-room fittings.
 JACKS.
 LAMPS, with their hooks and brackets.
 LINEN POSTS.
 LEAD PIPES.
 LOOKING-GLASSES.
 LOUVRE or LUFFER-GLASSES, affixed for the purpose of ventilation.
 MACHINERY affixed by frames, bolts, or screws, or in caps or steps of timber ; or otherwise than as being actual part and parcel of the freehold.
 MALTING PLANT, stoves, kilns, &c.
 MALT-MILLS.
 MARBLE CHIMNEY-PIECES (ornamental).
 MARBLE SLABS (ornamental).

Schedule,
No. 2.

MASH-TUBS.

MEAT-SAFES.

MILLS, on posts, &c., or otherwise than substantially affixed.
MILLS, laid on (not let into) a brick foundation—such foundation being itself irremovable.MOULDINGS, (ornamental,) bradded round the room as a finish to the papering (*d*).

OFFICE-DESK ENCLOSURES.

ORNAMENTAL FIXTURES.

OVENS.

PALING.

PEGS and PEG-RAILS.

PICTURE RODS (*e*).

PIER-GLASSES.

PIPES of all kinds, excepting rainwater pipes.

PLANT of every kind of trade, as breweries, distilleries, malting, &c.

PLANTS, in pots or boxes.

PLATE GLASS.

POSTS—as linen-posts, &c.

POWDER-MILL apparatus and machinery.

PRESSES.

PUMPS, slightly attached.

RAILS—as hat-rails, &c.

RANGES.

RESERVOIRS.

RODS FOR PICTURES, CURTAINS, &c. (*e*).

SALTPANS.

SALTWORKS, plant of.

SHEDS—accessary to or used for particular purposes of trade, and not substantially affixed. (*See* BRICK KILNS.)

SHELVES, and their brackets.

SHOP COUNTERS, and enclosures.

SHOP FITTINGS.

SHOP FRONTS.

SHRUBS, planted for nursery purposes, or for the purposes of sale.

SHUTTERS, door or window, not affixed.

SIDEBOARDS.

SINKS, with their pipes, &c.

SLABS, whether of marble, or wood ; fixed or folding.

SMOCK WINDMILL, on posts, &c., and not substantially affixed.

(*d*) These, however, cannot be removed, unless the papering be finished fair underneath, so that the moulding can be removed without damage to the room.

(*e*) In some cases picture rods are so arranged as to form an integral part of the cornice, in which case they cannot be removed.

*Schedule,
No. 2.*

SMOKE-JACK.
 SOAP-WORKS, (plant of.)
 SOIL-PIPES.
 SPRING ROLLERS for blinds.
 STAIR-EYES and rods.
 STEAM-ENGINES, affixed for purposes of trade.
 STILLs, and their apparatus.
 STOVES.
 SUNBLINDS, and their casings.
 TANKS—of iron, slate, &c., used instead of cisterns.
 TAPESTRY.
 THRESHING-MACHINES.
 TREES, planted for nursery purposes, or for purposes of sale.
 TUBS.
 TURRET-CLOCKS.
 VARNISH HOUSE, and apparatus.
 VATS.
 VERANDAHS, not substantially affixed.
 VESSELS—standing on frames or brickwork.
 WAINSCOT—ornamental and supplementary; and affixed by screws only.
 WARMING APPARATUS.
 WATER-BUTTS.
 WATER-CLOSET APPARATUS.
 WATER-TRUNKS.
 WATER-TUBS.
 WINDMILLS, on posts, frames, rollers, blocks, pattens, or piers; or otherwise than substantially affixed.
 WINDOW BLINDS and SHUTTERS.
 WINDOW FASTENINGS.
 WIRE WINDOW and FIRE-GUARDS.
 WIRES to bells.

SCHEDULE, No. III.

*Fixtures Removable by the Tenant, if annexed by him;
 but usually scheduled in the Lease (a).*

BARS.
 BATHS, with their pipes, &c.
 BOLTS.
 BUILDINGS of every kind erected during the term.

(a) And these fixtures ought always to be scheduled in the lease, since their removal materially affects the freehold, whilst it gives but little advantage to the lessee.

<i>Schedule,</i>	CHIMNEY-PIECES.
<i>No. 3.</i>	CHIMNEY-DRESSINGS.
	CISTERNS, with their pipes, &c.
	CLOSETS.
	COVINGS.
	CUPBOARDS.
	DOORS.
	DOOR-SHUTTERS.
	DRAWERS.
	DRESSERS.
	FASTENINGS.
	FOOTPIECES or FOOTPACES.
	FRAMES (door or window.)
	GATES.
	GILT, and other MOULDINGS.
	GRATINGS.
	GUARD BARS.
	HEARTHES.
	HINGES.
	HOOKS.
	IMPROVEMENTS of every kind.
	IRON BOLTS and BARS.
	IRON GUARDS.
	IRON PIPES.
	IRON RAILS.
	KEYS.
	LATCHES.
	LEADEN PIPES.
	LOCKS.
	MARBLE and other CHIMNEY-PIECES.
	MARBLE and other SLABS.
	MOULDINGS.
	PALING.
	PARTITIONS.
	PILES.
	PIPES, of every kind.
	POSTS.
	PUMPS.
	SASHES.
	SHELVES.
	SHUTTERS.
	SINKS, with their pipes, &c.
	SOIL-PIPES.
	STAIR-EYES.
	SUN-BLINDS, and their casings.
	TANKS, of iron, slate, or stone, used as cisterns, &c.
	WAINSCOT.
	WATER-CLOSET APPARATUS.
	WATER-PIPES.
	WATER-TRUNKS.

WINDOWS.
WINDOW-FASTENINGS.
WINDOW-SHUTTERS.

SCHEDULE, No. IV.

Doubtful Fixtures, of which the Character must be determined by the particular circumstances of the Tenure.

BRICK-SETS and kilns, sheds, &c.
BUILDINGS, erected for special purposes.
FRAMES in GARDENS.
FURNACES in smelting-houses, &c.
GARDEN-FRAMES.
GLASSES IN GARDENS.
GLASS-FRAMES IN GARDENS.
GREEN-HOUSES.
HOT-HOUSES.
KILNS.
LIME-KILNS.
MALTING-FLOORS, stoves, kilns, &c.
PAVEMENTS, under Verandahs, or in Green-houses, &c.
SHEDS.
STORE-HOUSES.
TABLES, fixed, or dormant.
TEMPORARY BUILDINGS.
VERANDAHS.
WIND OR WATER-MILLS.
WATER-WHEELS, AND RUNS.
WORKSHOPS.

END OF FIXTURES.

DILAPIDATIONS.

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DILAPIDATIONS.

CHAPTER I.

DILAPIDATIONS OF CHURCH PROPERTY.

SECT. I.—*As to who are liable for Repairs.*

THE incumbent of an ecclesiastical benefice is a tenant for life. As such he is bound to preserve and transmit the temporalities of the living in as good and sound a state as that in which he received them. He is even bound to do more. Inasmuch as the dwelling-house and other property attached to the cure were set apart for the purpose of more effectually promoting the great objects of the Christian ministry, by furnishing adequate temporal support and a suitable residence for the officiating minister, he is under an obligation to maintain and preserve this property unimpaired; so that his successors in all future time may enjoy those advantages which have been secured to him; and the church and the country retain the services of a resident incumbent in every parish.

Liability of incumbents.

On grounds of general policy.

Besides these considerations of general policy, there are other grounds on which an obligation to repair attaches to an ecclesiastical incumbent. His is the only beneficial ownership of the property. He is liable to no rent for his occupation; he is constrained by no special covenants; nor does any other party whatsoever derive any emolument or advantage from it. There is no reversioner, who, by reason

On other grounds.

of any pecuniary or other interest in the estate, can be called upon to contribute to its restoration or repair. Its ownership is a series of life-estates, and each successive occupant is bound to do his own part towards the support and maintenance of the property;—and thus his immunities become responsibilities, imposing upon him duties in this respect to which parties under ordinary circumstances would not be liable. And this is a wise state of things; if it were otherwise, either the inheritance of the church would be wasted, and the object of its consecration to public purposes be defeated, or an unfair and ruinous burden might be imposed upon one incumbent by reason of the laxity and negligence of his predecessors.

Against both of these consequences the law has rigidly guarded, by enforcing a stringent obligation to repair upon every ecclesiastical incumbent, and giving civil remedies against the party himself and his executors if that obligation should ever be neglected. Hence, every grade of church officers holding property or occupying buildings by virtue of their spiritual offices, is included under this obligation;—archbishops, bishops, deans, prebendaries, canons, rectors, and vicars, are equally bound to preserve the official residence from dilapidation and decay.

Curates.

A curate, however, from the very uncertain tenure on which he holds his situation, is not usually expected to do any repairs, of the benefit of which he might be immediately deprived by his appointer, upon whom, therefore, the law casts the burden of sustaining the buildings attached to the benefice (*a*). But, by the provisions of an Act of Parliament (*b*), where the whole profit of a benefice shall have been allotted to the curate, the rector, vicar, or other spiritual person, is allowed to deduct or retain therefrom in any or each year, so much money, not exceeding in any case one-fourth part of the profits,

37 Geo. III.
c. 99, s. 63.

(*a*) *Curate of Orpington's Case*, 3 Keb. 614.

(*b*) 57 Geo. III. c. 99, s. 63.

as shall have been actually expended during the year in the repair of the chancel, parsonage, &c., or other buildings in respect of which the rector, &c., or his executors, administrators, or assigns, would be liable for dilapidations to their successors. And, in like manner, where the profits of the benefice do not exceed one hundred and fifty pounds per annum, the rector, &c., may deduct and retain from the salary allotted to the curate in each or any year, so much money as shall have been actually expended in such repairs as aforesaid, over and above the amount of the surplus remaining of such profits after payment of the salary allotted to the curate; provided that the sum deducted, after laying out such surplus, shall not exceed, in any year, one-fourth part of the salary of such curate.

Expenses of dilapidation may, in some cases, be deducted from the curate's stipend.

Rectors and vicars are alike liable to the costs of repairing and sustaining the buildings, &c., parcel of the rectory or vicarage.

Rectors and Vicars.

Prebends, also, are bound in a similar manner with respect to the houses which they occupy in virtue of their office. And this, even though the residence is not specifically annexed to the prebendal stall, but only belongs generally to the cathedral; it remaining with the bishop to assign to each prebendary the house which he may think fit. Thus where, as in the cathedral church of Wells, there were eight prebends and eight houses, and the bishop had assigned a house to a particular prebend, who suffered it to fall into dilapidation, and, after his death, his successor sued his executors for the costs of those dilapidations, the court held them liable; for the house, when assigned by the bishop to a prebendary, became parcel of the prebend (c), and as such the prebendary was bound to repair, and was therefore liable to a suit for dilapidations.

Prebends.

(c) *Dr. Sand's Case*, Skin. 121.

SECT. II.—*Nature and Extent of this Liability.*

THE temporalities of a benefice which the incumbent is bound to sustain and preserve, are, the chancel, the residence and adjacent buildings, and the fences of the glebe-lands and property: but the incumbent is not bound to repair tenements not being part and parcel of the benefice.

Nature and extent of repairs to be done.

Wise v. Metcalfe.

As to the nature and extent of those repairs which are obligatory on an incumbent, the case of *Wise v. Metcalfe* (d), which was very elaborately argued in the Court of Queen's Bench, will furnish the best guide. It was an action against the executor of a deceased rector by his successor; and the question was, for what dilapidations he was liable. The rectory-house was an ancient structure, built with timber, and plastered on the outside, and had upon it the date of 1624; the barns were also old, but not so ancient as the house. The dilapidations were estimated at £399 18s. 6d. The principle upon which the estimate was made was, that the former incumbent ought to have left the rectory-house, buildings, and chancel, in good and substantial repair; the painting, papering, and whitewashing, being in proper and decent condition for the immediate occupation and use of his successor; that such repairs were to be ascertained with reference to the state and character of the buildings which were to be restored, where necessary, according to their original form, without addition or modern improvement. This was proved to be the usual principle on which dilapidations of property of this kind were estimated.

If the rectory-house, &c., were to be repaired in the same manner only as buildings ought to be left by an outgoing lay tenant, who is bound by covenant to leave them in good and sufficient repair, the expense of such reparation would amount to £310;

the painting, papering, and whitewashing not being included.

If the former incumbent were only bound to leave the buildings wind and water tight, and in that condition which an outgoing lay tenant not bound by covenant to do repairs, ought to leave them, the expenses amounted to £75 11s.

After an elaborate argument as to which of the above principles ought to be adopted, the judgment of the court was delivered by Mr. Justice Bayley; who said,—

“We are not prepared to say that any of the rules suggested are precisely correct, though the second approaches most nearly to that which we consider as the proper rule.” After citing the ancient rule of English law from very early precedents (*e*), he proceeded: “From this statement of the common law, two propositions may be deduced,—first, that the incumbent is bound, not only to repair the buildings belonging to his benefice, but also to restore and rebuild them, if necessary; secondly, that he is bound only to repair, and sustain, and to rebuild when necessary. Both these rules are very reasonable; the first, because the revenues of the benefice are given as a provision, not for a clergyman only, but also for a suitable residence for that clergyman, and for the maintenance of the chancel; and if by natural decay,—which, notwithstanding continual repair, must at last happen,—the buildings perish, these revenues form the only fund out of which the means of replacing them can arise. The second rule is equally consistent with reason, in requiring that which is useful only, not that which is matter of ornament and luxury.”—“It follows, from the first of these propositions, that the third mode of computation proposed in the case cannot be the right one; because a tenant not bound by covenant to do repairs, is not bound to rebuild or replace; the landlord is the person who, when the subject of

Judgment
of J. Bayley.

(*e*) See 12 & 13 Hen. VIII.; Rot. 126; 1 Lut. 116.

occupation perishes, is to provide a new one, if he think fit. And if the second proposition be right, a part of the charges contained in the first mode of computation must be disallowed; for papering, white-washing, and such part of the painting as is not required to preserve wood from decay by exposure to the external air, are rather matters of ornament and luxury, than utility and necessity." After confirming his views by citations from the canon law, the learned Judge thus concluded: "Upon the whole, we are of opinion the incumbent was bound to maintain the parsonage, (which we must assume upon this case to have been suitable in point of size and in other respects, to the benefice,) and also the chancel, and keep them in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement; and that he was not bound to maintain or supply any thing in the nature of ornament, to which painting, (unless necessary to preserve exposed timbers from decay,) and white-washing, and papering belong; and the damages in this case should be estimated upon that footing. It will be found, that this rule will correspond nearly with the second mode of computation, and probably will be the same if matters of ornament and luxury are not taken into consideration."

Ultimately the amount of damages ascertained on the principle above laid down, was fixed at £369 18s. 6d.; and judgment entered accordingly.

The decision in the above case rather extended the liability of incumbents, as explained in a case then recently determined. Lord Chief Justice Best had ruled, in *Percival* and *Cooke* (f), that the executors of a deceased incumbent were not bound to put the rectory-house into a finished state of repair, but only to restore what was actually in decay, and to make such repairs as were absolutely necessary for the preservation of the premises. But

Percival v.
Cooke.

the surveyor had estimated the amount on the principle that the representatives of the late incumbent were bound to do every thing which an incoming tenant would do, whereas the learned Judge was of opinion that they were not bound to do more than an outgoing tenant.

From the cases generally, it may be inferred that an incumbent is bound to sustain the buildings attached to the benefice, in a good and substantial state of repair, even though it may become necessary entirely to rebuild; that it is not sufficient to preserve them from actual decay, but that he must renew and restore from time to time such portions as from age or accident are so far dilapidated, as to be liable in a short period to become useless, although they be not as yet actually so. At the same time, he is not under any obligation to modernize or improve the tenements, nor to bear the expense of any ornamental or decorative works.

General
result of
cases on
record.

If, through lapse of time and consequent decay, or by fire, tempest, or other accident, the rectory-houses or other buildings attached to the benefice, are reduced to such a state of dilapidation as to make it necessary to rebuild, the incumbent, whilst he is under an obligation to replace them, cannot be compelled to do more. Thus he is not bound to erect larger, more substantial, more modern, or more convenient buildings than those which existed before. He may, however, do so, with the consent of the bishop, provided that the new erections are suitable in size and other circumstances to the value of the living. So, with the same consent of the ordinary, he may alter, enlarge, and modernize an existing building, subject to similar restrictions. It is obvious that a strict control should be exercised over incumbents in these matters, lest their successors should become burdened with the maintenance and repair of houses far larger than their necessities require, and far more expensive than the emoluments of the benefice are calculated to support. Or, lest on the other hand, the accommodation

As to rebuild-
ing.

Enlarging
and modern-
izing.

provided should be insufficient, or the character of the new buildings be unsuitable to the station and circumstances of a clergyman.

To meet the difficulties of rebuilding parsonage-houses, the Ecclesiastical Court is in the habit of ordering one-fifth part of the proceeds of the living, to be set apart for the building fund, where a suit has been instituted in the life-time of the incumbent (*g*).

17 Geo. III.
c. 53, raising
money for
repairs, &c.

The statute 17 Geo. III. c. 53, also provides that, with the consent of the patron and ordinary, the incumbent shall be empowered to raise money by mortgage of the glebe lands, tithes, or other property of the living for 25 years, for the purpose of rebuilding or repairing the house, where one year's income of the benefice shall be insufficient for that purpose. The interest is to be paid yearly, and also 5 per cent. per annum of the remaining debt to be paid off in each year by the incumbent or his successors, until the whole shall have been discharged. By this enactment, incumbents are enabled to throw part of the burden upon their successors, when they die or are removed from the living before the whole of the debt is paid. The same statute empowers the governors of Queen Anne's bounty, to advance and lend, for similar purposes, and on the same securities as above mentioned, a sum not exceeding £100, where the annual value of the living does not exceed £50, to be repaid without interest; and, in other cases, a sum not exceeding two years' profits of the benefice, to be repaid with interest at 4 per cent. per annum.

Dilapidations
in time of
predecessor,
&c.

The obligation on an incumbent to transmit the temporalities of the benefice in thorough repair to his successor is absolute and unqualified. He is, therefore, liable for dilapidations which occurred in the time of his predecessor, or during the interval between the avoidance of the latter and his own entrance on the living, as well as for those which

occurred during the period of his own incumbency. So he is liable for those dilapidations which have happened after his avoidance of the living and before the appointment of his successor, except in those cases where the interval has been very considerable; when a proper apportionment is made between the new incumbent and his predecessor.

These regulations, though stringent, are obviously just and necessary;—they have the effect of securing due vigilance on the part of every clergyman who enters on a living; insomuch as, if he omit to claim such a sum for repairs as shall suffice to put the house and buildings into a sound state, he will either during his incumbency, or on his own avoidance, have to pay the penalty of his negligence in the increased outlay necessary for repairs, or the larger demand for dilapidations put forward by his successor. In individual cases, the rule may be productive of injury and injustice; as where a clergyman succeeds to a benefice of which the former incumbent has died insolvent, leaving the parsonage-houses and premises in a state of decay, and throwing the whole burden of repair or restoration upon his successor. But, in general, the rule is the means of securing to every ecclesiastical person a suitable residence in a habitable state of repair, and thereby increasing his facilities for the discharge of the duties of his office.

It does not fall within the scope of this treatise to allude at any length to other topics connected with the subject of waste. But it may be observed, that no incumbent is entitled to cut down timber for his own personal emolument (*h*), either on the glebe or in the church-yard; though for the purposes of repairing or rebuilding the chancel, parsonage-house, or other buildings, he will be permitted to do so. It is not, however, essential that this identical timber should be used in the repairs, it may be sold and the money expended for that object (*i*).

(*h*) *Knowle v. Harvey*, 3 Bulst. 158; 1 Roll. Ab. 333; also, *Rex v. Zakar*, 3 Bulst. 91.

(*i*) *Withers v. Dean and Chapter of Winchester*, 3 Mer. 421.

Bad wood, however, may be cut down (*k*), and the parson may take the loppings of the trees in the church-yard, and may mow the grass therein (*l*), but he must not remove the soil (*m*).

Management
of glebe
lands.

There is no remedy against an incumbent for managing the lands of the benefice in an improper manner, Mr. Justice Patteson laying it down in a recent case (*n*): "That no contract to use lands in a husband-like manner, can be implied between an incumbent and his successor, since there is no privity between them."

But an incumbent must not open a mine, nor dig stone other than for repairs (*o*); nor carry away earth for the purpose of making bricks (*p*). The executors of a deceased incumbent are entitled to emblements, or the growing crop which the deceased has sown (*q*), and to the rent due on all leases expiring at his death, and also to a proportion of all moduses and compositions falling due at fixed periods by virtue of any instrument executed after the 16th June, 1834 (*r*).

Where an incumbent resigns his benefices, which is his own voluntary act, he loses all right to emblements (*s*). But if he avoid his benefice in law by accepting another, he retains his right to emblements until he is actually deprived (*t*). If an incumbent, being also the patron of a benefice, avoid it by accepting another, and then present to the former, the presentee is entitled to all the profits from the time of presentation (*u*).

(*k*) *Strachy v. Francis*, 2 Atk. 217.

(*l*) *Line v. Harris*, 1 Lee's Judgments, 146.

(*m*) *Bennet v. Bonaker*, 2 Hag. 25.

(*n*) *Bird v. Relph*, 4 B. & Ad. 826; 1 Nev. & M. 415.

(*o*) *Knight v. Moseley*, 1 Amb. 176.

(*p*) *Bp. Lond. v. Webb*, 1 P. Wms. 527.

(*q*) 28 Hen. VIII. c. 11, and 1 & 2 P. & M. c. 17.

(*r*) 4 & 5 W. IV. c. 22.

(*s*) *Bulwer v. Bulwer*, 2 B. & Ald. 470.

(*t*) *Halton v. Cove*, 1 B. & Ad. 538.

(*u*) *Betham v. Gregg*, 10 Bing. 352.

SECT. III.—*Remedies for Dilapidations of Ecclesiastical Property.*

THE inferior clergy are subject to the control of their superiors, not only in the spiritual functions of their office, and in the ordinary discharge of their clerical duties and the regulation of discipline; but they are also amenable to the same authority for the preservation and right employment of the temporalities of their benefices. For this purpose, bishops, archdeacons, and rural deans, within their respective provinces, are required to visit every parish, and ascertain, at certain intervals, the state of the parsonage-house and accessory buildings, the chancel, and all other erections to be repaired and sustained by the incumbent. This visitation is a preventive measure, whereby the progress of decay is stayed and timely repairs are enforced; thus ensuring the stability and permanence of all the tenements supported out of the profits of the living. If any incumbent contumaciously refuses to make such proper and sufficient reparations as from time to time may become necessary, he may be compelled to do so by ecclesiastical censures. In such cases a certain proportion, usually one-fifth (x), of the profits of the living are sequestrated by episcopal authority for that purpose, until the object is accomplished by the thorough repair of the dilapidated mansion-house, or other building, as the case may be.

Visitation at intervals, to enquire into dilapidations.

Ecclesiastical censure.

Bishops and archbishops and ecclesiastical corporations are also under an obligation "*sub attestatione divini judicii*," to keep their temporalities in repair. And, by statutory provisions (y), the king is enjoined to keep in repair the property of archbishoprics, bishoprics, and other ecclesiastical dignities, during their vacancy.

Permissive waste, or the gradual and inevitable decay of the fabric through lapse of time, is thus

(x) Gibson's Cod. 751; *Sollers v. Lawrence*, Willes, 420; *North v. Barker*, 3 Phil. 307.

(y) *Magna Charta*, c. 5, & *Stat. of Westminster*, 1; 3 Edw. I. c. 21.

prevented by the supervision of the above-named ecclesiastical officers. For voluntary waste, or an actual depreciation and injury of ecclesiastical property, there are, however, other remedies.

Prohibition. The writ of prohibition, which issued out of Chancery was one of these, but it is now seldom resorted to; an injunction, granted by the same court, on sufficient cause shown, being a more convenient as well as a more efficient remedy. An injunction will be issued against an incumbent at the suit of the patron, and against a bishop and dean and chapter at the suit of the king; but a party having no interest in the freehold of a benefice, as a lessee of the bishop, has no right to an injunction (z).

Waste by a bishop is the subject of prohibition (a). Writs of prohibition and assistance have been granted, to prevent a prebendary from committing waste on his prebend (b).

Suit. For dilapidations the party injured may institute a suit in the Ecclesiastical Court, or commence an action at law. Under the former, the party in default may be compelled to repair under ecclesiastical censures, or by sequestration; or he may be punished, in aggravated cases of voluntary waste, by deprivation. Against a layman the court has no power of sequestration; and this is a remedy, therefore, not available in the case of a lay impropiator (c). But he may be imprisoned as contumacious if he refuse compliance with the order of the court to repair.

In the instance of a fraudulent grant of his property by an incumbent with the view of defrauding his successor of his remedy for dilapidations, the grant is made void by the statute, 13 Eliz. c. 5; and by 13 Eliz. c. 10, s. 2, the grantee may be sued in the spiritual court as if he were executor or administrator.

(z) *Withers v. Dean and Chapter of Winchester*, 3 Mer. 421.

(a) *Bishop Winchester v. Wolgar*, 3 Swans. 493.

(b) *Ackland v. Atwell*, 3 Swans. 499.

(c) *Walwyn v. Awbery*, 1 Mod. 258; 2 Mod. 254.

An action on the case at common law may also be brought for dilapidations against the executor of a deceased prebendary, rector, or vicar, by his successor (*d*). If, however, the benefice be avoided by the promotion or resignation of the incumbent, he is the proper person to be sued. In certain cases the plaintiff may bring distinct actions for dilapidations, as for those of the chancel, and those of the rectory-house (*e*); but this can rarely be either necessary or proper. The plaintiff cannot when his claim has been once decided by a competent jurisdiction proceed again in another court (*f*).

Money recovered for dilapidations by a succeeding incumbent from his predecessor, must within two years be expended in the repairs of the buildings in respect of which it was recovered, under pain of forfeiting double the amount. If the incumbent die within two years his executor is under similar obligation to repair (*g*).

(*d*) *Jones v. Hill*, 3 Lev. 268; *Radcliffe v. D'Oyly*, 2 T. R. 630.

(*e*) *Young v. Munby*, 4 M. & S. 183.

(*f*) *Okes v. Ange*, 2 Lev. 413.

(*g*) *Gibs. Cod. Tit. 32, c. 4.*

CHAPTER II.

DILAPIDATIONS OF OTHER PROPERTY.

SECT. I.—*Liability to Repair by mere force of Law.*

Ancient doctrine of waste.

THE ancient doctrine of waste, and the penalties attached to it, prove that the law has ever regarded the tenant as responsible for the use and enjoyment of the property demised to him. He is not the absolute owner of the estate, he has the *usufruct* only ;—hence he is answerable for the manner in which he treats the premises during the continuance of the demise. The substance of the property remains vested in the lessor, and on the determination of the tenancy the possession will revert to him : he has a right, therefore, to claim from the lessee, that the premises should return to him again without waste or dilapidation ; and if they have become ruinous and fallen into decay, the landlord may recover from the tenant a compensation in damages equal in amount to the cost of repairing and reinstating the property.

Liability of tenants.

But these rights and liabilities are subject to some qualification. The owner of an estate allowing to another the use and enjoyment of it, in consideration of a certain remuneration in the shape of rent, the landlord is bound to allow for such decay and dilapidation in the premises as may be the natural consequence of lapse of time, of the action of the elements, and of a fair and reasonable wear and tear ;—these are all inseparable from the *usufruct*, and are considered, therefore, as included in the amount of the rent. No damages are recoverable for the results fairly attributable to or deducible from such causes ; and on this question it is that litigation chiefly arises, since it is notorious that extraordinary dilapidations, and injuries of every kind resulting

from avoidable accident, carelessness, waste, wilful damage or malice, must be repaired : these not being the natural consequences of occupation.

The liability which the law imposes upon tenants without covenant, varies according to the nature and duration of the tenancy. Proportioned to nature of tenancy.

Tenants at will, whose estate is so uncertain, are not responsible for dilapidations. The law will attach no liability to so frail a tenure, and hence the landlord can have no remedy against him for repairs. If he commit voluntary waste, by wilfully injuring or destroying the property, the landlord may maintain trespass against him (*a*). But for permissive waste, or injury which is the result of negligence or inadvertence, he is not punishable (*b*) : the only charge which a tenant at will takes upon himself is to occupy, and to pay his rent (*c*). Tenants at will.

Tenants from year to year, on agreements, or otherwise, stand on a different footing. They are liable for all dilapidations which are not the necessary consequences of the occupation, or the result of inevitable accident ; the law implying a contract on their part to use the tenements in a tenant-like manner, and not to commit waste (*d*). The mere use of a house, together with the influence of the elements, and lapse of time, will work a gradual and inevitable decay. Thus, floors and staircases will become worn and infirm, plastering will be weakened, tiles or slates will be loosened, the pointing of external brick-work will fret away, weather-boarding will rot, the lead of ridges and gutters will wear thin : no care on the part of a tenant can prevent these things from occurring. The law, therefore, throws no responsibility upon him for them. Tenants from year to year. Wear and tear.

But if the nosings of steps be broken off, or a Avoidable accident.

(*a*) Litt. s. 71.

(*b*) *Countess of Shrewsbury's Case*, 5 Rep. 13.

(*c*) Cro. Eliz. 784.

(*d*) 1 Saum. 323, b. n. 7 ; 1 Co. Litt. 57, a. 7 ; 1 J. B. Moore, 100.

door be torn from its hinges, or the pulley of a sash broken, or a pane of glass be cracked, the tenant must repair : such dilapidation not being the result of ordinary wear and tear. So, if a stranger come and injure the house, the tenant is liable ; for the law presumes that he is capable of resisting the wrong-doer.

Inevitable
accident.

But for the results of inevitable accident the tenant is not responsible. Thus, if the house be consumed by fire, or prostrated by tempest, or carried away by a flood, he is not bound to rebuild : such a liability as this does not result from the character of the relation between landlord and tenant.

Though, however, the tenant cannot be compelled to repair the more immediate consequences of flood or tempest, he is answerable for those more remote ; and, therefore, by implication for those more immediate, in many cases. Thus, if the roof be stripped by the wind, he is bound to replace the covering ; otherwise he will be liable for the decay of the timbers of the roof through exposure to the weather (*e*).

So, under certain circumstances, the mischief caused immediately by the elements the tenant must repair. Thus, where the estate is injured by the tide or stream through the decay of a sea-wall or of the banks of rivers, it is waste, for the tenant should have repaired the wall or bank, and prevented the accident ; but if by any sudden storm or unexpected flood injury is occasioned, it is not waste (*f*), and the tenant is not liable.

Ferguson v.
—.

The extent of the liability of tenants from year to year for repairs, may best be shown by citing one or two of the leading cases on the subject. In *Ferguson v.* — (*g*) the landlord, at the expiration of a yearly tenancy, brought an action against the tenant for dilapidations, and made the amount of an

(*e*) Co. Litt. 53, a. ; Bro. Ab. Conditions, pl. 40 ; 2 Roll. Abr. 818, 1, 17.

(*f*) Co. Litt. 536.

(*g*) 2 Esp. 590, Kenyon.

estimate which had been prepared for putting the house into complete and tenantable repair, the measure of his damages, Lord Kenyon said, "That it was not to be permitted to go for the damages so claimed. A tenant from year to year was bound to commit no waste, and to make fair and tenantable repairs,—such as putting in windows or doors that have been broken by him, so as to prevent waste and decay of the premises; but that in the present case, the plaintiff claimed a sum for putting a new roof on an old worn-out house; this I think the tenant is not bound to do, and that the plaintiff has no right to recover."

Lord Kenyon's judgment.

So, in *Horsefall v. Mather* (h), where the plaintiff declared on a contract by defendant to deliver up premises in the same state as he received them, and merely proved a tenancy from year to year, Chief-Justice Gibbs nonsuited the plaintiff, saying "the obligation is stated too largely. Can it be contended that a yearly tenant would be bound to rebuild if the premises were destroyed by accidental fire, or if they became ruinous by any other accident? He is only to use them in a husband-like manner, or with ordinary care."

Horsefall v. Mather.

C. J. Gibbs

In *Anworth v. Johnson* (i), (an action against a yearly tenant,) it appeared that the stairs of the house were worn out, new sashes were wanted, the doors were rotten and fallen to pieces from decay, latches, keys, and locks were broken and damaged, and a panel of a door was broken, Lord Tenterden in summing up said: "It appears this was a very dilapidated house when the defendants took it, and they have had a very considerable quantity of work done upon it. The first question is, what are the things an occupier of a house from year to year is bound to do? He is only bound to keep the premises wind and water-tight. A tenant, who covenants to repair, is to sustain and uphold the premises;

Anworth v. Johnson

Lord Tenterden.

(h) Holt. 7.

(i) 5 C. & P. 239; see also *Leach v. Thomas*, 7 C. & P. 328, Pattison.

but that is not the case with a tenant from year to year. A great part of what is claimed by plaintiff consists of new materials, where the old were actually worn out : for that the defendants are clearly not liable. But if you think that defendants have done all that tenants from year to year ought to do, considering the state of the premises when they took them, the defendants are entitled to your verdict."

Liability of
yearly ten-
ants in
general.

We may gather from the foregoing cases, that yearly tenants are liable only for fair and tenantable repairs ; that they are bound to use the demised premises with ordinary care, and to guard against premature decay and dilapidation, by keeping the buildings wind and water-tight ; by renewing as occasion may require, such external painting as may be necessary to preserve the wood and iron-work, and by maintaining the windows and doors sufficiently sound to exclude the weather. But for the decay consequent on ordinary wear and tear and lapse of time,—against which no care of the tenant would suffice ; for the gradual imperceptible deterioration of the solid fabric of the house, and the inevitable weakening and ultimate wearing out of it from these causes,—the yearly tenant is not liable (*k*).

Still he should not omit to adopt reasonable and useful precautions to obviate, at a slight expense, the occurrence of great and manifest injury to the premises. If a window or tile were even accidentally broken, it seems that he would be liable if he did not repair it, if the plain consequence of his neglect would be a serious damage to the house from wet, &c. (*l*).

Liability of
tenants hold-
ing over after
term expired.

It may be useful to add, that where a tenant holds over after the expiration of his lease, he will be bound during his tenancy by the covenant to repair. And the same where the lease is void. In *Beal v.*

(*k*) See *Torriano v. Young*, 6 C. & P. ; 8 Taunton ; and *Martin v. Gillham*, 2 Nev. & P. 568.

(*l*) Chitty, Jun., On Contracts, 3rd Edition, p. 335.

Sanders (m), *A.* devised certain estates to *B.* for ^{Where lease} life; the devise contained a limited power of leasing. ^{is void.} The devisee leased part of the demised premises for a term beyond the limit appointed. The lease contained the usual covenants to repair, and was afterwards assigned to the defendants, who, for several years, remained in possession, and paid the rent to the expiration of the term:—*Held*, that although the lease was void, the defendants held as tenants from year to year under the covenants of the lease, and were liable to repair up to the end of the term.

SECT. II.—*Of the Liability to Repair under Covenant.*

WITH regard to covenants to repair, we may con- ^{Division of} sider, first, who are bound by them; secondly, the ^{subject.} time when the obligation attaches, and the period during which it continues; next, the property to which it applies; and lastly, the extent of the obligation.

On the first point a very few words will suffice. ^{Who are} Covenants to repair run with the land: therefore ^{bound.} they bind the assignee of the lessee, as well as his ^{Assignees.} executors and administrators, even although he be not mentioned in the deed (*n*). Such covenants as relate to the manner of using the premises, bind the lessee and every one to whom he may assign his interest (*o*). And, as the covenant extends to every part of the demised premises, the assignee of any part is liable under this covenant for not repairing that part (*p*).

Where the covenant is to do a specific thing, and ^{Where assignee not} not something which is to be performed during ^{liable.} the whole term, as to build a wall on the demised

(*m*) 3 Bing. N. C. 850; 5 Scott, 58; 3 Hodges, 147; 1 Jurist, 1083.

(*n*) *Bacheloure v. Gage*, Cro. Car. 188.

(*o*) *Lant v. Norris*, 1 Bur. 287.

(*p*) *Congham v. King*, Cro. Car. 221.

premises, the assignee is not bound unless expressly named (q).

So, if a lessee covenant for himself and his assignees to build a house within a certain time, and assign after the time has expired, the assignee is not bound; but if he assigns before the covenant is broken, the assignee is bound to perform it (r).

The assignee of the reversion can only sue for breaches of covenant committed after he had purchased the reversion; and, therefore, where *A.* demised to *B.* for a term of years, two messuages, and the lease contained a covenant by *B.* that he would, during the term, keep the premises in repair, and leave them, at the end of the term, in good repair, and in the same state as they were in at the beginning; but at the end of the term the messuages were out of repair, and had been converted into a single house; and *B.* held on without a fresh lease; after which *C.* purchased the reversion of *A.*, and under him *B.* continued to hold; the court decided that *B.* was not liable in assumpsit, on an implied contract, to put the messuages in such repair and in the same state as they were in at the commencement of the term, but that, supposing *B.* so liable, *C.* had no right of action for breaches of the contract committed before he purchased the reversion (s).

Executors
and adminis-
trators.

As the executors, administrators, or assigns of the parties bound by these covenants are liable for a breach of them, so the executors, administrators, or assigns of him who had originally the right to take advantage of them, as the lessor or covenantee, may sue for any breach which may have been committed. Thus the assignee or devisee of the reversion,—or (if the lessor's were a chattel interest in the estate) his executor or administrator,—or his heir, if the rever-

(q) *Spencer's Case*, 5 Rep. 16.

(r) *Glascot v. Green*, 1 Salk. 199.

(s) *Johnson v. St. Peter's Hereford (Churchwardens)*, 4 Ad. & E. 520; 4 Nev. & M. 186; 1 Har. & W. 720.

sion descends upon him, may sue the parties liable under the covenants (t).

In like manner any covenant affecting the mode of enjoying the demised premises, runs with the land, and the benefit of it passes to the assignee of the reversion. Thus, where a party covenanted to erect a smelting-mill on a piece of land not demised, nor shown to belong to the lessors, it was held that the assignee of the reversion might sue for the breach of that covenant (u). What covenants run with the land.

Liability under a covenant to repair, usually commences with the right to possess and enjoy the premises demised. The obligation to sustain and uphold the property, dates from the sealing and delivery of the lease. Under some circumstances, however, the covenant does not attach or take effect until after the doing of some specific act, or the happening of some particular event. Thus, in the case of *Lant v. Norris* (x), the obligation to repair did not arise until after the premises were rebuilt. So, in *Horsefall v. Testar* (y), where the defendant had covenanted to repair the premises at all times, (as often as need or occasion should require) "and at farthest within three months after notice," the court were of opinion that the tenant was not bound to repair until notice had been given, the covenant not being general and absolute, but qualified and conditional on the giving of the specified notice (z). When the liability commences.

Where, however, by two separate covenants the lessee binds himself by one to repair generally, and by another to repair within a certain time after notice, the general obligation attaches, and the

(t) *Sale v. Kitchingham*, 10 Mod. 158; and *Lougher v. Williams*, 2 Lev. 92. See also *Buckley v. Pirk*, 1 Salk. 317.

(u) *Sampson v. Easterby*, 9 B. & C. 505, S. C. nom; *Easterby v. Sampson*, 6 Bing. 644; 4 M. & P. 601; and 1 C. & J. 105.

(x) Burr. 287.

(y) 7 Taun. 385; 1 Moo. 89.

(z) See also *Doe dem. Rankin v. Brindley*, 1 N. & M. 1; 4 B. & Ad. 84.

covenantor is liable, although no notice has been given (*a*). Upon a covenant, therefore, to repair and keep in repair during the continuance of the term, an action may be maintained for breaches committed before the term has expired (*b*).

Tenant
holding over.

A general covenant to repair not only binds the covenantor during the continuance of the lease, but during such further period as he may continue to hold over after its expiration. The law presumes that he continues tenant from year to year, under the same covenants and conditions as were contained in the expired lease. Hence, he is liable for dilapidations so long as his tenancy continues, to the same extent as during his previous term. Under such circumstances, therefore, it has been decided that a tenant is bound to rebuild premises which have been consumed by fire (*c*).

When not
liable.

But where there was a covenant to yield up the premises in good repair at the end of the term, and a covenant not to convert or alter the premises, but to deliver them up in the same state as when the lease was granted, and it appeared that the buildings were altered during the term and were dilapidated at the end of the term, and the tenants held over, but no dilapidations happened during the continuance of the yearly tenancy: it was held that the tenants were not liable on the implied agreement for those alterations and dilapidations, because they were breaches of the covenants in the lease, which the continued tenancy did not impose the duty of repairing (*d*). No covenants can continue binding as implied covenants, except such as prescribe the manner in which the premises shall continue to be used.

(*a*) *Wood v. Day*, 7 Taun. 646; 1 B. Moo. 389; *Roe d. Goatty v. Paine*, 2 Camp. 520; *Doe d. Morecraft v. Meux*, 4 B. & C. 606.

(*b*) *Luxmore v. Robson*, 1 B. & A. 584.

(*c*) *Digby v. Atkinson*, 4 Camp. 275.

(*d*) *Johnson v. Churchwardens of St. Peter's, Hereford*, 4 N. & M. 186; 1 H. & W. 720.

The covenant to repair the premises demised, extends (as we have already stated) to every portion of them, which can be accounted part of the freehold. It includes all such new buildings, (whether substituted in the place of others, or added to those already existing,) as the tenant will not be allowed to remove as fixtures at the end of his term. Thus, where there was a lease of three messuages, and the tenant covenanted to pull them down and erect three others in their place, to keep the messuages so to be erected in good repair, and, at the end of the term, to leave the demised premises and the houses thereon erected in good repair, and the lessee pulled down the three messuages, and erected five in their place; it was held that he was bound to leave the whole five in good repair (*e*).

To what
buildings
covenant
extends.

New build-
ings.

Where the covenant is to repair all erections and buildings erected and built on the demised premises, the covenantor will be bound to repair such erections set up for the purposes of his trade, or for domestic use or ornament as would, in the absence of such a covenant, have been removable as fixtures (*f*). This rule has been extended to a verandah put up by the tenant (*g*), and to a millstone fixed by the lessee himself upon the premises (*h*) where the covenant was to "repair and leave in repair improvements."

Even though
erected for
trade or con-
venience.

In like manner racks are included in a covenant to repair stables, nor need it be shown by the declaration that they were fixed to the freehold (*i*). A lessee covenanted to repair *prædimissa* from the time of the lease to the determination thereof, and to deliver up at the end of the term, not saying *from time to time*. This lessee afterwards built a malt-house, and the court was of opinion that the co-

(*e*) *Douse v. Earle*, 3 Lev. 264 ; 2 Ventr. 126 ; *Brown v. Blunden*, Skin. 121.

(*f*) *Naylor v. Collinge*, 1 Taun. 19.

(*g*) *Penry v. Brown*, 2 Stark. 403.

(*h*) *Master v. Bradley*, 9 Bing. 24 ; 2 Moo. & Sc. 25.

(*i*) Anon. 2 Vent. 214.

tenant extended to it, for it was a continuing covenant (*k*).

Equitable
construction
of covenant.

The courts, however, will construe covenants to repair in a reasonable manner, and in accordance with the manifest intention of the parties. Thus, where a lessee covenanted within fifteen years to lay out the sum of £200 upon the demised premises, in erecting and rebuilding messuages thereon, and to repair the said messuages so to be erected, and all other houses at any time hereafter to be erected, and to yield up the demised premises, with all such other houses in good repair at the end of the term; the Court of King's Bench were clear that the assignee was not bound to repair buildings erected on the premises at the time the lease was granted, because the intention was evidently to remove those and erect others in their place; and the lessor, not having insisted on the lessee erecting new houses within the first fifteen years of the term, could not call upon the assignee to repair the old and dilapidated buildings which he had negligently suffered to remain (*l*).

Where a lessee covenanted to repair four messuages demised; and within fifty years to take down the said demised messuages, *as occasion should require*, and in the place thereof to erect upon the premises four new brick messuages; the Court of Common Pleas intimated an opinion, that if within the fifty years the houses should be so repaired as to make them completely and substantially as good as new houses, the covenant would be satisfied without taking down the old houses; and that the words, "as occasion should require," would raise a question of fact for a jury, whether such occasion did arise (*m*).

Boundary
walls.

A covenant by a lessor to repair the external parts of the demised messuage, comprehends the boundary walls of it, though they adjoin other buildings; and

(*k*) *Brown v. Blunden*, Skin. 121.

(*l*) *Lant v. Norris*, 1 Burr. 287.

(*m*) *Evelyn v. Raddish*, 7 Taun. 411.

he is liable to compensate the lessee for any damage which he may have sustained from the non-repair of such a wall, although such damage has resulted from the pulling down of the adjoining building (*n*).

An express covenant to repair, binds the covenantor to do so under all circumstances and at all events, nor can he be excused by inevitable accident. Extent of obligation ; inevitable accident. He has covenanted generally and absolutely, has introduced neither exception nor qualification into his agreement, and the law, therefore, is bound to construe strictly the engagement into which he has deliberately entered. If events the most unexpected afterwards occur, if calamities the most unusual are brought about, if circumstances are entirely altered by subsequent occurrences, the lessee is, nevertheless, bound by his engagement. All these events were, or they might have been, anticipated. If they were foreseen it would be unjust to absolve the lessee from his covenant, and deprive the lessor of his remedy ; if they were not, still the parties have prescribed and defined the terms of their own agreement, and the law will interfere no farther than to explain and enforce it accordingly.

Hence, under a general covenant to repair, the lessee is bound to rebuild if the premises be destroyed by accidental fire (*o*). Case of fire. And this obligation extends to his assignee. Nor does it make any difference, though there be a covenant to insure for a specific sum, as well as to repair ; for, if the premises be burnt, the lessee is liable to rebuild, though the cost exceed the amount of the insurance (*p*). But where a lessor covenanted in a lease with his lessee, that he would, in case the premises demised should be burnt down, "rebuild and replace" the same in the same state as they were in before the fire, he is only bound to restore the premises to the state

(*n*) *Green v. Eales*, 1 Gale & D. 468.

(*o*) *Bullock v. Dommitt*, 6 T. R. 650 ; 2 Chit. 608. See also *Digby v. Atkinson*, 4 Camp. 275 ; and *Phillipson v. Leigh*, 1 Esp. 398.

(*p*) *Digby v. Atkinson*, 4 Camp. 275, *Ellenborough*.

in which they were when he let them, and is not bound to rebuild any additional parts which may have been erected by his tenant (*q*).

Landlord's
liability in
case of fire.

If a lessee covenants to repair, &c., "casualties by fire and tempest excepted," it seems that the landlord is not bound to repair in either of the excepted cases (*r*); nevertheless the tenant continues liable to the payment of rent, notwithstanding the premises are destroyed by fire (*s*).

A landlord sometimes covenants with his lessee to repair; but if he do not, the tenant cannot compel him (*t*). If, therefore, the premises be consumed by fire, and the landlord having insured them, has recovered the insurance money, the tenant cannot compel him, either at law (*u*) or in equity (*x*), to expend the money so received in rebuilding the premises; nor will a court of equity restrain the landlord from suing for his rent until the premises are rebuilt (*y*).

General liability
under
covenant.

Though, under a general covenant to repair, a lessee is bound to make good the consequences of all accidents, yet he is not bound to supply defects in the fabric of the buildings, produced by time and use, so long as those defects do not render the house untenable. He is bound, however, to preserve and deliver up the premises in a tenable condition, and is prevented by his covenant from saying either that they were not tenable at the commencement of the term, or were not calculated to last so long. He will be always liable in damages to the extent of the costs of repair (*z*) and dilapidation.

(*q*) *Loader v. Kemp*, 2 C. & P. 375, Best.

(*r*) *Weigall v. Walters*, 6 T. R. 488.

(*s*) *Hare v. Groves*, Anst. 687; and *Belfour, Admor. v. Weston*, 1 T. R. 310.

(*t*) *Bayne v. Walker*, 3 Dow. 253.

(*u*) *Pindar v. Ainsley*, cited 1 T. R. 312.

(*x*) *Leeds v. Cheetham*, 1 Simons, 146; *Holtzappfel v. Baker*, 18 Ves. 115.

(*y*) *Hare v. Groves*, 3 Anstr. 687.

(*z*) *Vivian v. Champion*, 2 Lord Ray. 1125; Holt, Ch. J.

As to the nature and extent of the repairs which lessees are compelled to perform under their covenant, we shall first give a general view of their liability as collected from the cases, one or two of the more important of which we shall cite at length, for the purpose of showing the opinion which the courts have expressed as to the obligation entered into by the covenantor in a general covenant to repair; and afterwards add a schedule and specification in detail of such works as the nature of each kind of tenancy appears to us to warrant.

It has been decided that, under covenant to repair the tenant is liable for repairs only, and not for the extra expense of laying a new floor on improved plan, or the like (*a*). But where a tenant taking premises out of repair agrees to put them into habitable repair, this implies a better state than that in which he found them; and, regard being had to the state of the premises at the time of the agreement, and of their situation, and to the class of persons likely to inhabit them, he is to put them into a condition reasonably fit for the occupation of an inhabitant (*b*).

A covenant to repair does not compel or even authorise the lessee to pull down and rebuild, although it does bind him to rebuild in case the premises fall down (*c*).

A covenant to repair, however general and absolute in its terms, is to be construed with a reference to the age and condition of the buildings at the time of the demise. Therefore although a lessee is precluded from pleading, that the messuages in question were ruinous and in decay at the commencement of the term, or were so old and infirm as to be incapable of lasting till its expiration, yet he will be allowed to give evidence of the age and state of repair of the premises when the lease was

(*a*) *Soward v. Leggatt*, 7 C. & P. 613; Abinger.

(*b*) *Belcher v. M'Intosh*, 8 C. & P. 720; 2 M. & Rob. 186; Alderson.

(*c*) *Jones dem. Cowper v. Verney*, Willes, 175.

granted; and the verdict of a jury will be guided by a reference to these facts, when they come to decide whether the covenant has been substantially complied with, or to assess the damages to which the defendant may be liable.

This principle of construction is clearly illustrated in the three following cases, which may be considered as fair exponents of the law on this subject:—

*Harris v.
Jones.*

In *Harris v. Jones* (*d*), the covenant was to leave the premises in good and substantial condition. It appeared, on the part of the landlord, that glass in the skylight was broken, to the amount of 40s.; that iron rails, tiling, and coping, were dilapidated. On the part of the tenant, it was proved that he had laid out considerable sums in repairs during the term, and that the premises were, in the whole, in tenantable repair, and in a better state than when demised. Lord Chief Justice Tindal said:—"The question is, whether the covenant has been substantially complied with. The defendant was only bound to keep up the house as an old house, not to give the plaintiff the benefit of new work." The jury found for the defendant.—Hence it would appear that we must infer that such a covenant as the above is satisfied by maintaining the tenements in *substantial repair*; and that substantial repair will be judged of with reference to the previous condition of the premises; and that a literal performance of the covenant is not to be required;—but this is altogether contrary to the principle of other decisions, as well as to reason and right; since a tenant, even not under covenant, is liable to restore broken glass. The case may be best understood and reconciled with others, by considering the defects and dilapidations proved to exist as of too minute and trifling a character to sustain and justify a verdict against a tenant who had complied substantially, and at considerable expense, with the spirit of his covenant.

*Gutteridge v.
Munyard.*

In the case of *Gutteridge v. Munyard* (*e*), tried

(*d*) 1 Moo. & Rob. 173.

(*e*) 1 Moo. & Rob. 334.

before the same learned judge, similar principles were laid down. The house in question was very old at the time of the demise ; the covenant was to repair and yield up in repair. The Chief Justice remarked, “ Whenever an old building is demised, and the lessee enters into a covenant to repair, it is not meant that the old building is to be restored, in a renewed form, at the end of the term, or of greater value than it was at the commencement. What the natural operation of time flowing on effects, and all that the elements bring about in diminishing the value, constitute a loss, which, so far as it results from time and nature, falls upon the landlord. But the tenant is to take care that the tenements do not suffer more than the operation of time and nature would effect. He is bound, by seasonable applications of labour, to keep the house, as nearly as possible, in the same condition as when it was demised. If it appear that he has made these applications, and laid out money from time to time upon the premises, it would not, perhaps, be fair to judge him very rigorously by the reports of a surveyor, who is sent upon the premises for the very purpose of finding fault ”

Again, in *Stanley v. Twogood* (*f*), where the covenant was to preserve, keep, and have the house in good and tenantable order and repair, Chief Justice Tindal held that “ the question was, whether the house was in a substantial state of repair, as opposed to mere fancied injuries,—such as a mere crack in a pane of glass, or the like. That although the state of repair at the time of the demise was not to be taken into consideration, yet it would make a difference whether the house were new or old at the time of the demise.”

The same principle, that a verdict is to be given, or damages assessed with reference to the state of the premises when the defendant takes possession, is laid down in the case of *Burdett v. Withers* (*g*).

(*f*) 3 Bing. N. C. 4 ; 2 Hodges, 132.

(*g*) 7 Ad. & E. 136 ; 2 Nev. & P. 122.

It will not, however, be permitted to the defendant to go into matters of detail; the general condition only may be shown (*h*).

Party wall.

It may just be observed, that an express covenant to repair does not render the covenantor liable to contribute to the expense of rebuilding a party-wall under either the Building Act, (14 Geo. III. c. 78.) (*i*), nor under the new one (7 & 8 Vict. c. 84), for the first named statute intended to throw the burden upon the owner of the improved rent (*k*); and the second specifically places it upon the lessor.

Inside painting.

Under a covenant that the tenant "should and would substantially repair, uphold, and maintain" a house, it has been decided that he is bound to keep up the inside painting (*l*). This decision, however, would not now be supported, unless under aggravated circumstances. It goes farther than recent cases seem to justify. Painting at specified times is generally provided for by a special clause in the lease, and this appears to strengthen the exception.

Other covenants.

A covenant to "alter and improve" or to rebuild, is not satisfied by substantial and thorough repairs, but must be strictly complied with (*m*). So, a covenant to make a shop front is not performed by merely enlarging windows, although that may be sufficient for the purposes of the tenant's trade (*n*).

A court of equity will enforce a specific performance of a covenant to make the elevation of a house correspond with that of others (*o*).

SECT. III.—Of Breaches of the Covenant to Repair.

UNDER a lease the tenant has a right to use and

(*h*) *Young v. Mantz*, 6 Scott, 277; 1 Arn. 198; S. C. nom. *Mantz v. Goring*, 4 Bing. N. C. 451.

(*i*) *Stone v. Greenwell*, cited, 3 T. R. 461; *Moore v. Clark*, 5 Taun. 90.

(*k*) *Southall v. Leadbetter*, 3 T. R. 458.

(*l*) *Marke v. Noyes*, 1 Car. & P. 265; Abbott.

(*m*) *City of London v. Nash*, 3 Atk. 512.

(*n*) *Doe d. Nash v. Birch*, 1 M. & W. 402.

(*o*) *Franklyn v. Tuton*, 5 Mad. 469.

enjoy the premises demised during the term, on the conditions specified in the indenture. At the determination of the tenancy the landlord has a right to receive back the tenements in substantially the same condition as they were in when he demised them. Hence any material and extensive alteration of the premises, whereby either the value of them is diminished, or the evidence of their identity is liable to be affected, is waste, and a breach of the covenant to repair. Thus, converting two chambers into one, or a hand-mill into a horse-mill (*p*); pulling down a house, and rebuilding it in a different fashion, though the new house be more valuable than the old one (*q*); and building new houses, which produce £200 per annum, on the site of a brewhouse which produced only £120, have respectively been held waste (*r*).

What is waste.
Material alterations.

Pulling down and rebuilding.

The breaking of a doorway through the wall of a demised house into an adjoining house, and keeping it open for a long space of time, is a breach of the general covenant to repair (*s*); and where the tenant of a house covenanted to repair the premises and all erections, buildings and improvements erected on the same during the term, the court held, that it was a breach of the covenant to remove a verandah erected during the term, the lower part of which was affixed to the ground by means of posts (*t*).

Breaking doorway.

But where the lease contemplates alterations being made in the premises; the enlargement of windows, by converting them into shop windows, the opening of one internal door and the stopping up of another, and taking down partitions, are no breaches of a covenant to repair, and to keep in repair, a dwelling-house, together with all such buildings, improve-

Exception.

(*p*) *Grave's Case*, Co. Litt. 53, a. n. 3; *City of London v. Græme*, Cro. Jac. 182.

(*q*) 2 Roll. Abr. 815, pl. 17, 18.

(*r*) *Cole v. Green*, 1 Lev. 311, S. C. 1 Mod. 94; *Cole v. Forth*.

(*s*) *Doe dem. Vickery v. Jackson*, 2 Stark. 293.

(*t*) *Penry v. Brown*, 2 Stark. 403.

ments, or additions, as should be erected, set up, or made by the lessee (*u*).

Pulling down wall.

If a lessee covenant to support and maintain the brick walls belonging to the premises, and he pulls down a brick wall which divides a front court-yard from another court at the side of the house, it will be a breach of the covenant (*x*).

Leaving new building out of repair.

A lessee covenanted to preserve and keep, and at the end of the term leave the demised premises in good and tenantable repair: during the term he erected a lean-to, with a roof so ill-constructed that it did not exclude the weather, and so left it at the end of the term. This was held to be a breach of his covenant (*y*).

Covenant to keep in repair.

Where a man covenants to *keep* buildings in repair, and he pulls them down, or suffers them to decay, he is immediately guilty of a breach of his covenant, and an action may be maintained against him before the term has expired (*z*). But if he covenant *to leave them in as good a state as he found them*, and then pull them down, he will be guilty of no breach of covenant, for he may rebuild them; therefore no action will lie before the end of the term (*a*).

To leave in repair.

To maintain, sustain, and repair.

Where the lessee covenanted to *maintain, sustain, and repair* two messuages; to an action on a bond given for the performance of these covenants, he pleaded that he had repaired all the messuages, with the exception of one kitchen, which was so ruinous that he could not repair it, but that he had pulled it down and built another in as short a time as possible; and that he had at all times well repaired the new kitchen. The court, upon demurrer to this plea, decided that though it would have been good in an action

(*u*) *Doe dem. Dalton v. Jones*, 1 Nev. & M. 6; 4 B. & Ad. 126.

(*x*) *Doe dem. Wetherell v. Bird*, 6 C. & P. 195. See also *Corporation of London v. Venables*, 6 C. & P. 196.

(*y*) *Stanley v. Twogood*, 3 Scott, 313; 3 Bing. N. C. 4; 2 Hodges, 132.

(*z*) *Shep. Touch.* 173; *Luxmore v. Robson*, 1 B. & A. 584.

(*a*) *Shep. Touch.* 173.

of waste, yet that it was bad to that action upon a covenant by which he had tied himself down to an inconvenience which he ought at his peril to provide for (*b*).

If a man covenant to repair a house, and it become ruinous by accident, the covenant will not be broken till after a convenient time for its reparation has elapsed (*c*): and if he covenant to repair it before a particular day, and the reparation by such day be rendered impossible by the act of God, this is no breach of the covenant. But he is bound to repair it as soon as possible (*d*).

“ There are no particular formalities requisite to give validity to an express agreement to repair, as that it should be by writing or under seal. But an agreement by word of mouth between landlord and tenant, or an agreement contained in a written lease, void as a lease for want of a stamp, is binding on the tenant (*e*), and as absolute and unqualified in its operation as if it were by deed under seal (*f*); and any words which show the intention that the repairs shall be done will be sufficient. Thus, where the words of a deed were; ‘it is agreed the lessee shall keep the house in good repair, the lessor putting it in good repair,’ it was held that an action of covenant lay against the lessor” (*g*). An agreement to leave a farm as found, is an agreement to leave it in tenantable repair, if it was found so; and will maintain a declaration so laid (*h*).

By agreement, dated 20th October, 1824, reciting a former agreement in 1819, for the grant of a lease of copyhold premises to *A. B.* for twenty-one years, from the 25th of March, 1820; and that *A. B.* had

(*b*) *Wood v. Avery*, 2 Leon. 189.

(*c*) *Shep. Touch.* 173; *Sir Ant. Main's Case*, 5 Rep. 21.

(*d*) *Shep. Touch.* 174.

(*e*) *Richardson v. Gifford*, 1 Ad. & E. 52; 3 N. & M. 325.

(*f*) *Conolly v. Baxter*, 2 Stark. 525.

(*g*) 1 Esp. 278; *Gibbons*, on Dilapidations, p. 66.

(*h*) *Winn v. White*, 2 W. Bl. 840.

requested, and the plaintiff had agreed, that the defendant should be accepted as tenant, and a lease should be granted to him instead of to *A. B.*, on the same terms; and that the plaintiff was desirous to let the premises to the defendant as soon as a good license for that purpose should be granted to him by the Lord of the Manor, but not before: the plaintiff, in consideration of the covenants and agreements thereafter contained on the part of the defendant, covenanted that he would, so soon as a good license for that purpose should have been procured to him from the lord, at the defendant's expense, lease the premises to the defendant for all the residue then unexpired of the term of twenty-one years, from the 25th of March, 1820, &c.; and the defendant thereby covenanted, from thenceforth yearly during the remainder to come of the said term, to pay the plaintiff the rent, and also that he would, from time to time during the time to be granted as aforesaid, keep the premises in repair, &c. The agreement contained also a covenant by the plaintiff for quiet enjoyment during the remainder of the term, on payment of the rent and performances of the covenants. The defendant entered upon the premises, and occupied them until the expiration of twenty-one years, from the 25th of March, 1820:—*Held*, that he was liable on the covenant for repair, although no lease had ever been made to him pursuant to the agreement, nor any license obtained from the lord for that purpose (*i*).

SECT. IV.—*Of the Landlord's Remedies for Dilapidations.*

Division of
subject.

PROCEEDINGS in law in respect to dilapidations are either preventive or remedial. To the first class we assign the injunction issued by a court of equity to restrain parties from committing waste: to the

(*i*) *Pistor v. Cator*, 9 M. & W. 315.

second class, the actions of assumpsit, debt, covenant, ejectment, or case in the nature of waste, which the party aggrieved may bring against the wrong-doer.

It may often happen that mischief once done is irreparable. The assistance of the law may be invoked to punish the aggressor, or to recover compensation for the party injured; but the nature of the injury may be such as to preclude the possibility of satisfaction. The consequences of the wrongful act cannot be repaired; and damages, however large, may be a very inadequate compensation. Thus, a noble avenue of trees may be cut down; or a wall destroyed on which was a valuable painting; or some piece of costly sculpture be shattered. The reversioner in these and similar cases, finds little relief in the most vindictive assessment of damages in his favour: the money will not replace what has been despoiled,—a century must elapse ere the grove can flourish again; and a much greater interval may pass away ere a genius shall arise who can replace the broken sculpture, or the beautiful picture. Hence the law provides a summary mode of preventing the infliction of such injuries, by application to a court of equity for an injunction, to restrain persons from the commission of wrongs such as these, on property of which they may have for a time the possession and *usufruct*. The court, however, will not lightly interfere with the party in possession, in the exercise of what he considers his rights; good cause must be shown by the petitioner who would call into exercise the summary power of the court: there must be an apparent intention on the part of the tenant to do some irreparable injury to the premises. This intention is most commonly evidenced by some act of waste committed, or, at least, by certain preliminary steps being taken, by the party whom it is sought to restrain. If, therefore, he send a surveyor to mark trees (*k*), or threaten to

Injunction.

Only granted where serious injury is threatened.

open mines (*l*), the court will interfere. An injunction has been granted against a person who only insisted on a right to commit waste (*m*).

Not for trivial mischief.

But for trivial injuries done or contemplated, no injunction will be issued (*n*); nor where the application comes long after the acts complained of have been done, and when those acts have ceased, therefore, to be any intimation of an intention to commit future waste. Tenants will be restrained by injunction from making such alterations in their tenements as, in the opinion of all mankind would be improvements, if these alterations are distasteful to those who have a permanent interest in the property (*o*), and a court of equity will restrain a tenant from committing an act contrary to his own covenant, whether it be waste or not (*p*).

Where tenant insists on disputed right.

Where the tenant insists on his right to do certain acts, which, if done, will cause irreparable mischief to the party resisting, the court will grant an injunction until the right can be tried in an action at law. Thus, where a tenant claimed the right to remove valuable trade-fixtures, which the landlord disputed, and it appeared that the right was doubtful, the tenant was restrained from removing them until judgment was given (*q*).

Who may petition for an injunction.

Any person who has right to the land, and who would be prejudiced by the waste in contemplation, may apply for an injunction. There need be no privity between the parties. A ground landlord may enjoin the under-lessee of his tenant (*r*); or this protection may be afforded to the contingent interests

(*l*) *Gibson v. Smith*, 2 Atk. 182.

(*m*) *Barnardiston*, 494.

(*n*) *Wilson v. Bragg*, Bac. Abr. Waste O.; and *Barry v. Barry*, 1 Jac. & Walker, 651.

(*o*) But see *Mollineux v. Powell*, 3 P. Wms. 268, n.

(*p*) *Lord Grey de Wilton v. Saxon*, 6 Ves. 106; *Drury v. Molins*, *ibid.* 328; *London (Mayor) v. Hedger*, 18 Ves. 353.

(*q*) *Sunderland v. Newton*, 3 Sim. 450.

(*r*) *Farrant v. Lovel*, 3 Atk. 723; *Amb.* 105.

of an executory devisee (s), or of a child in *ventre sa mere*.

With the injunction the court will sometimes grant Account. an account, by which the defendant will be compelled to give compensation for waste already committed. This is only done, however, to avoid multiplicity of suits, and will never be granted except as auxiliary to the injunction (t).

In certain cases of extreme urgency, the court When granted. will grant an injunction in vacation (u); but never when the party complained of claims the inheritance, unless such claim is manifestly groundless (x). Though only one act of waste is proved, the injunction is to restrain waste generally (y).

At common law, the reversioner has a right to Entry to view waste. enter on the premises and view the state of repair (z), after giving notice to the tenant so that he may not be taken by surprise (a). If the latter offer any obstruction, he is liable to an action on the case (b). The lessor, however, has no right to enter on the premises and do the repairs himself, unless there was some stipulation to that effect at the time of the letting (c). But if, by the provisoes in the lease, the term be forfeited by the tenant's neglect to repair, then, as the lessor may enter and avoid the lease, so he may enter and do the repairs without avoiding the lease, and he will be entitled to recover from the tenant all the costs of those repairs which were essential to prevent the forfeiture of the estate, as damages consequent on the tenant's breach of contract (d).

(s) *Robinson v. Litton*, 3 Atk. 209.

(t) *Jesus College v. Bloom*, 3 Atk. 362; Amb. 54; *Bishop Winchester v. Knight*, 1 P. Wms. 106.

(u) *Laythorp v. Marsh*, 5 Ves. 261.

(x) *Lowther v. Stamper*, 3 Atk. 496.

(y) *Coffin v. Coffin*, 6 Mad. 17.

(z) 2 Inst. 306.

(a) *Doe dem. Wetherell v. Bird*, 6 C. & P. 195.

(b) *Hunt v. Dorman*, Cro. Jac. 478.

(c) *Barker v. Barker*, 3 C. & P. 557; Best.

(d) *Colley v. Streeton*, 2 B. & C. 273.

Remedy by
action.

We have already seen that the tenant may be under a liability to repair, arising from a contract either express or implied. An implied contract to repair, springs from the relation of landlord and tenant, and is a conclusion of law from the relative situation of the parties, without any agreement on either side on the subject. An express contract may be merely verbal, or it may be in writing not under seal, or it may be by covenant : according to the nature of the contract will be the remedy for the breach of it. If the agreement to repair be under seal, an action of covenant must be brought to recover damages for the breach ; or, if compliance with the covenant be secured by a penalty, debt will lie ; if it be a parol contract, an action on the agreement can be instituted ; if it be merely a liability which the law imposes, as the result of an implied undertaking, *assumpsit* may be brought for the recovery of compensation for neglect to fulfil it.

On the
contract.

For the tort.

Again ; a neglect to repair where there is an obligation to do so, may be regarded either as a breach of contract, or as a tort, or wrongful act. If the former view be taken, one of the above-named remedies, selected in accordance with the nature of the instrument out of which the contract arises, will vindicate the rights of the party injured. But the complainant may treat the commission of waste as a wrongful act or misfeasance, and as an injury to his reversionary estate ; and in this view of it, he will be entitled to bring an action on the case in the nature of waste.

Ejectment
for the
forfeiture.

Finally ; by the conditions of the tenancy, a neglect or refusal to repair, may incur a forfeiture, and the landlord will then be entitled to recover possession of the premises by an action of ejectment.

Hence a landlord, lessor, or reversioner, may maintain against the tenant who neglects to repair, either an action of *assumpsit* on his implied contract, or on his express agreement, an action of covenant

or debt for the penalty, or an action on the case ; or, he may proceed in ejectment to recover possession. A few words will suffice to explain these respectively.

A tenant-at-will being possessed of an estate of a frail and uncertain tenure, incurs no liability for repairs. Against such an one the landlord can have no remedy for permissive waste ;—he can enter, and do whatever repairs are necessary himself. If the tenant were to expend money on the premises, he might be evicted immediately afterwards, and lose all the benefits of his outlay. He enjoys no rights in respect of the estate, but at the caprice of the landlord ; and he incurs no liabilities. He will be answerable, however, in an action of trespass for voluntary waste.

No remedy against tenant-at-will for permissive waste.

A tenant from year to year is differently circumstanced. He cannot be evicted without due notice. His estate is not determinable until a certain fixed period, and in the meantime he enjoys the property. Hence he is liable for certain repairs ; and if he fail to do them, he may be sued on an implied contract, to maintain the tenement in a tenantable state. In such an action damages will be recovered equal to the costs of repair.

Tenant from year to year.

Where there has been an express agreement not under seal between the parties as to repairs, an action for the breach should be on the agreement, the declaration stating mutual promises, and the breaches complained of, in the terms of the agreement.

Action on express agreement.

In an action of assumpsit on the implied contract to maintain the buildings in a tenantable state, care must be taken in describing the nature of the liability, that it may appear to be that which the law regards as springing from the relation of landlord and tenant. Thus a declaration, that “ in consideration that the defendant *had become* and was tenant to the plaintiff, of a certain messuage, &c. he undertook to keep the place in good tenantable repair, to *uphold and support*, and to leave the premises in

On implied contract.

the state he found them," is bad, such an undertaking not resulting from the relation of the parties (*e*).

Tenant on
sufferance.

A tenant on sufferance, or one who holds over after the expiration of the lease, may be treated as an assignee, as he impliedly engages to observe such of the covenants contained in the lease as are applicable to his new holding; and for the breach of which he will be liable in assumpsit or case (*f*). If he commit any act of waste, the lessor may either have an action of trespass, treating the wrongful act as a determination of the right of possession (*g*), or he may maintain an action on the case, treating the possessory right of the tenant as continuing, and the act as injurious to his reversion (*h*).

Assignee and
personal
representa-
tive.

Assumpsit may be maintained against the assignee or the personal representatives of a tenant, to recover damages for dilapidations accrued since the assignment, or before or since the decease of the tenant.

Action of
covenant.

Where the lessee has entered into a contract under seal to repair, he may be sued for the breach of it in an action of covenant.

The declaration should set out the terms of the covenant verbatim, or the legal effect of it; and if there be any exception of casualties, such as damage by fire, or otherwise, it must be stated, and also that the damage, &c. did not arise therefrom (*i*). If a covenant with such exceptions be stated as a general covenant to repair, it is a fatal variance (*k*).

Covenant may also be maintained by the heir or assignee of the reversion against the assignee or personal representatives of the lessee for breach of the covenant to repair, which runs with the land (*l*).

(*e*) *Brown v. Crump*, 1 Marsh. 567; 6 Taun. 300, S. C.

(*f*) *Bromfield v. Williamson*, Style, 407; *Johnson v. St. Peters, Hereford*, 4 Ad. & E. 520.

(*g*) *Walgrave v. Somerset*, 4 Leon. 167; Co Litt. 57, a.

(*h*) *West v. Treude*, Cro. Car. 187; *Burchell v. Hornsby*, 1 Camp. 360.

(*i*) 4 Camp. 20; 2 B. & B. 395; 5 J. B. Moore, 164, S. C.

(*k*) *Tempany v. Burnand*, 4 Camp. 20; *Ellenborough*.

(*l*) Chit. Pl. vol. 1, p. 116, 6th edition.

An heir (*m*), or an executor (*n*), may be declared against as *assignee*, for a breach of covenant after he became interested (*o*). But an under-lessee cannot be sued in covenant or debt on the original lease (*p*).

An assignee of part of the reversion (*q*), may maintain this action, and an assignee of part only of the premises is liable to it (*r*); although debt could not be maintained in the latter case (*s*).

If the performance of the covenants in a lease is secured by a penalty, an action of debt may be brought to recover it; but, in general, it is more desirable to proceed by an action of covenant, in which damages beyond the amount of the penalty may be recovered for the several breaches; whereas if the plaintiff proceed for the penalty, he will be precluded from suing afterwards for general damages. "And where rent is due upon a lease, and there has also been another breach for not repairing, covenant is preferable to debt: because in the former, both the breaches of covenant may be included in one action, and damages for the whole be recovered" (*t*).

If the breach of covenant be treated as a tort, and an action on the case be brought, as for an injury to the reversion, it must clearly appear that the reversionary interest of the plaintiff has actually been injured, either by diminishing the value of the property, or affecting the evidence of the plaintiff's title thereto (*u*). It is not, however, essential that the alteration should actually lessen the marketable value of the premises, it is sufficient if they be there-

Debt for
penalty.

Action on the
case.
When it lies.

(*m*) *Derisley & anor. v. Custance*, 4 T. R. 75.

(*n*) 1 Salk. 316, 817.

(*o*) Chit. Pl. vol. 2, p. 367, note (*n*), 6th edition.

(*p*) *Holford v. Hatch*, Doug. 183, 445; Cowp. 766.

(*q*) 2 B. & Ald. 105; 4 B. & C. 157.

(*r*) *Congham v. King*, Cro. Car. 221.

(*s*) *Curtis v. Shirley*, 1 Bing. N. C. 756.

(*t*) Chit. Pl. vol. 1, p. 118, 6th edition.

(*u*) *Young v. Spencer*, 10 B. & C. 145.

by rendered less suitable to the purposes for which the reversioner intended them (x).

Permissive
waste.

It has been much disputed whether an action on the case in the nature of waste will lie for *permissive* waste, or a mere neglect to repair, against any one who has not entered into an express contract to repair. It is unnecessary to go through the various arguments; but the conclusion appears to be that such an action is maintainable against all but tenants at will. Three cases were deemed authorities against such an opinion, *Gibson v. Wells* (y), *Herne v. Benbow* (z), and *Jones v. Hill* (a); but the first of these was a decision in the case of a tenant-at-will, and therefore not at variance with the above conclusion: in the second, though the tenant held under a lease, yet the authority cited in support of the judgment did not bear it out, and the question appears not to have been much considered; and the third was decided on a collateral point, and is no authority on either side (b).

For voluntary waste, tenants, whatever be the nature of their tenure, are clearly liable. Where a tenant occupies premises, and pays rent under a lease void by the statute of frauds, he becomes liable to repair such premises according to the covenants contained in that lease (c).

At what time
it may be
brought.

An action on the case for waste, either wilful or permissive, may be maintained by the lessor during the term (d). But the tenements must be in a state

(x) *Governors of Harrow School v. Alderton*, 2 B. & P. 86.

(y) 1 N. R. 290.

(z) 4 Taun. 764.

(a) 7 Taun. 392; 1 Moore, 100.

(b) Those who may wish to pursue this investigation, may consult Coote's L. & T. pp. 569—571; Harrison's Woodfall's L. & T. p. 427; Chit. Pl. vol. 1. p. 141; 6th edition; *ibid.* vol. 2, p. 193, n. (k), and the various authorities there cited.

(c) *Richardson v. Gifford*, 1 Ad. & E. 52; 3 Nev. & M. 325.

(d) *Provost, &c. of Queen's College, Oxford v. Hallett*, 14 East, 489.

of dilapidation at the time of action brought, for although the neglect to repair at any time during the term, be a breach of contract by which the plaintiff is injured, yet that breach of contract is purged, and the injury and right of action satisfied and discharged by the subsequent restoration (*e*). Of course if the repairs be done by the landlord before action brought, this cannot be pleaded in answer to his claim for damages (*f*).

This action may be maintained at the suit of a landlord against a tenant who is holding over after the expiration of a notice to quit (*g*).

By the 3 & 4 W. IV. c. 42, s. 2, an important alteration has been made in the common law doctrine, *actio personalis moritur cum personâ*, as well in favour of executors and administrators of the party injured, as against the personal representative of the party injured; as far as regards injuries to personal and real property. It is thereby enacted, that "actions of trespass or case may be maintained by the executors or administrators of any person deceased, for any injury to the real estate of such person, committed in his life-time, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such person, and provided that such action be brought within one year after the death; and the damages when recovered shall be part of the personal estate of such person; and actions of trespass or case may be maintained against executors or administrators for any wrong committed by the deceased in his life-time to another; in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or adminis-

Effect of 3 &
4 W. IV. c.
42, s. 2.

(*e*) *Whelpdale's Case*, 5 Rep. 119 b.; 2 Inst. 306; Co. Litt. 53, a.

(*f*) *Walton v. Waterhouse*, 3 Saun. 420.

(*g*) *Burchell v. Hornsby*, 1 Camp. 360.

trators should have taken upon themselves the administration of the estate and effects; and the damages to be recovered in such action, shall be payable in like order of administration as simple contract debts." Subject therefore to the restrictions here imposed, actions may be maintained by and against executors and administrators for breaches of covenant to repair during the life of their testator or intestate.

Damages,
how to be
estimated.

In assessing the damages on an action for dilapidations, it is customary to give the amount requisite for the repairs. Nor will this custom be varied, although part of the dilapidations occurred when another person was entitled to the reversion, or another person in possession of the tenements. It is for the then dilapidated state of the premises that an action is brought, and to damages that the then reversioner is entitled. If, therefore, the owner of the reversion do not take advantage of the breach of a covenant to repair in his life-time, that cause of action does not vest in his executor, but descends, with the reversion, to his heir (*h*). Or rather, perhaps, he has a new and independent right to sue for the continuing injury to his reversionary estate.

Who may
claim.

Although, when tenements are dilapidated, the landlord has, generally speaking, no right to enter and execute repairs; yet the costs necessarily so expended may be recovered from the tenant who is under agreement to repair, although the landlord entered and did the repairs without the assent of the former; if the landlord is himself a lessee under covenant to repair, and is threatened with an ejectment on account of the dilapidations (*i*).

Damages
beyond costs
of repairs.

Under certain circumstances damages may be given beyond the amount of the actual cost of the repairs; provided the plaintiff has suffered such damages in consequence of the defendant's neglect to repair, or commission of waste. Thus, where a

(*h*) *Vivian v. Champion*, 2 Lord Ray. 1125; 1 Salk. 141.

(*i*) *Colley v. Streeton*, 2 B. & C. 273; S. C. 3 D. & R. 522.

tenant who was bound to repair, left, and at the end of the tenancy the premises were out of repair, the jury were directed to give the landlord, in an action against the tenant, compensation for the loss of the use of the premises while they were undergoing repair, in addition to the actual expense of the repairs (*k*).

So, where *A.* took premises under a repairing lease, and underlet them to *B.*, who also entered into a covenant to repair; and the under-lessee, having suffered the premises to go out of repair, the original lessor sued the original lessee for his breach of covenant: the court held, that the damages and costs of that action, and also the costs of defending it, might be recovered as special damages, in an action by the lessee against his under-tenant for the breach of his covenant to repair (*l*). In estimating damages, the general state of the premises at the time of the demise may be taken into consideration (*m*); but the defendant will not be allowed to go into matters of detail (*n*).

Where the neglect to repair, or the commission of voluntary waste, incurs, by the conditions of the tenancy, the penalty of forfeiture, the lessor may enter and determine the lease, or maintain ejectment to recover possession of the premises.

This action must be brought while the dilapidations remain; but it need not be instituted so soon as they occur, nor within any given period; for the breach of the covenant to repair is a continuing forfeiture, of which advantage may be taken at any time, until the breach is purged by repairs. If, during this interval, the landlord have received rent, or done any other act to recognize the tenancy, it will not operate as a waiver, so as to prevent him

(*k*) *Woods v. Pope*, 6 C. & P. 782; *Gaselee*.

(*l*) *Neale v. Wyllie*, 3 B. & C. 533; S. C. 5 D. & R. 442.

(*m*) *Burdett v. Withers*, 2 N. & P. 122.

(*n*) *Mantz v. Goring*, 4 Bing. N. C. 451.

from entering subsequently if the dilapidations continue (o).

In ejectment for a forfeiture under a covenant to keep in tenantable repair, it is not, however, necessary to show that the premises were not in repair on the day of the demise; but if proved to be out of repair a short time previously, it is incumbent on the defendant to give evidence that they had been put into repair before the right to re-enter accrued (p).

As to waiver
of forfeiture.

Where there was a general covenant to repair, and a covenant to repair within a certain time after notice, and the landlord gave the tenant notice to repair forthwith; it was held that such notice was no waiver of the right of entry, accruing under the general covenant to repair (q). In a similar case, however, it was held that the notice to repair within a limited time was an implied promise to allow that period for the tenant to purge his forfeiture, and that the landlord could not enter until that time had expired (r).

A covenant to do some particular act, as to make a shop front, is not a continuing covenant; and if, therefore, the right of entry for a breach of it be once waived, it cannot afterwards be taken advantage of as a forfeiture of the lease (s).

If, on the trial of an ejectment against the assignee of a tenant on a forfeiture of the lease by a breach of covenant, it appears that the landlord acted so as to induce the tenant's assignee to believe that the latter was doing all that he ought, the landlord cannot recover, although the covenants be actually broken, and there be neither a

(o) *Fryett d. Harris v. Jeffereys*, 1 Esp. 393; *Doe d. Sore v. Akers*, 1 Ry. & Moo. 29; 1 C. & P. 154; *Doe d. Boscawen v. Bliss*, 4 Taun. 735.

(p) *Doe d. Hemmings v. Durnford*, 2 C. & J. 667.

(q) *Roe d. Goatly v. Paine*, 2 Camp. 520.

(r) *Doe d. Morecroft v. Meux*, 4 B. & C. 606.

(s) *Doe d. Nash v. Birch*, 1 M. & W. 402.

release nor a dispensation on the part of the landlord (*t*).

A court of equity has repeatedly refused to relieve parties from a forfeiture for breach of covenant to repair, on the premises being thoroughly reinstated, on the ground of its being an unwarrantable interference with the agreement between the parties (*u*). Under very peculiar circumstances a plaintiff was restrained from suing for the breach of such a covenant (*x*). Equitable relief.

The rule to be applied to all cases (except that of forfeiture for non-payment of rent), would seem to be, that courts of equity will relieve "where the omission and consequent forfeiture are the effect of inevitable accident, and the injury or inconvenience arising from it is capable of compensation; but where the transgression is wilful, or the compensation impracticable, the courts will refuse to interfere" (*y*).

SECT. V.—*Of the Tenant's Remedies for Dilapidations.*

No action can be brought by the lessee against his lessor for neglect to repair except upon an express contract. If the landlord has covenanted with the lessee to do certain repairs, he may be sued by the latter on that covenant; and the same observations (*mutatis mutandis*), are applicable in this case, as where the landlord seeks to enforce the performance of such a covenant by the tenant.

(*t*) *Doe d. Knight v. Rowe*, 2 C. & P. 246; R. & M. 343; Abbott. See *West v. Blakeway*, 3 Sc. N. R. 199; 9 Dow. 846. See also *Doe d. Sheppard v. Allen*, 3 Taun. 78.

(*u*) *Wadham v. Calcrafft*, 10 Ves. 67; *Eaton v. Lyon*, 3 Ves. 692; *Mosely v. Virgin*, 3 Ves. 184; *Hill v. Barclay*, 16 Ves. 402; 18 Ves. 56; *Bracebridge v. Buckley*, 2 Price, 200.

(*x*) *Hannam v. South London Water Works Comp.* 2 Mer. 65.

(*y*) *Rolfe v. Harris*, 2 Price, 210, n.

Tenant's
right to leave.

If, however, the tenant of a house from year to year, who is not under any agreement to repair, finds the premises becoming unsafe and useless for want of repairs, he may quit without giving notice; nor will he be liable for rent after the occupation ceased to be beneficial (z). Thus, although the tenant be under an agreement to keep a house in tenantable repair, he may quit without notice during the continuance of the term, if he find it becoming unwholesome from insufficient drainage, which cannot be remedied without unreasonable outlay on his part (a).

It is needless to add, that if the premises be burnt down, or destroyed by a flood or hurricane, the tenant is not liable for rent, so long as he is deprived of the use thereof. In this respect there is a broad distinction between yearly tenants and those who hold under a lease. The former are under a liability to pay rent resulting from their occupation and from that alone; and, hence, when that occupation, either ceases entirely, or ceases to be beneficial, they are exonerated from all claims for rent: but the latter are bound by special covenant to the end of their term, whatever may be the casualty which has happened to deprive them of the use and enjoyment of the tenements.

Lessee
charging
lessor with
cost of re-
pairs.

Where the lessee executes repairs to which the lessor is liable, it has been held that he might deduct the amount laid out from the rent (b): but this has since been frequently and reasonably doubted (c). At all events, a lessee cannot charge his lessor without giving him notice, because the lessor may not know that such repairs are wanting (d).

(z) *Edwards v. Hetherington*, 7 D. & R. 117.

(a) *Collins v. Barrow*, 1 Moo. & Rob. 112; Bayley.

(b) *Taylor v. Beal*, Cro. Eliz. 222.

(c) Per Holt, C. J. 1 Lord Ray. 420; *Clayton v. Kynaston*, B. N. P. 176. See also *Robinson v. Lewis*, 10 East, 227; *Graham v. Tate*, 1 M. & S. 609.

(d) Per Mansfield C. J. and Gibbs, J., 5 Taun. 96; *Moore v. Clarke*.

CHAPTER III.

ASSESSMENT AND VALUATION OF DILAPIDATIONS.

SUCH infinite variety of practice has hitherto existed in the valuation or assessment of dilapidations that it would appear to be most desirable to endeavour to establish some general rule of practice or precedent, by which valuers might be guided, and the accuracy of their valuations tested.

Variety of
practice in
valuation.

That some such standard is much needed, is proved by the fact that the Royal Institute of British Architects have lately published "a Report of the select Committee on Dilapidations," which having been prepared by "experienced members of the profession," is put forth as calculated to "serve the profession as a work of reference in such matters."

Necessity of
some
standard.

Report of the
Committee of
the R. I. B.
A. on Di-
lapidations.

Unfortunately however for the permanent settlement of the difficulties by which this question is surrounded ;—the committee, overlooking the importance of the relative legal obligations of the parties; have adopted one code, or specification, by which all parties alike are to be bound, whilst their adaptations of the various positions of parties to this standard are replete with error.

Its errors.

Of this few evidences will suffice. A tenancy at will, and a yearly tenancy are classed as one and the same thing; and the liability of a tenant at will is said, "in the opinion of the committee," to "extend to making good all works that may have been broken, damaged, or defaced" (*a*). That it would be most desirable in many, if not all, instances to

(*a*) Report of the Committee of the R. I. B. A. on Dilapidations.

attach this responsibility to tenants-at-will, is not the opinion of the committee alone. But to what purpose does the committee lay down a schedule of charges as incumbent on a party whom the law specially absolves?

It is to be regretted that this committee did not conduct their investigation under the guidance of some competent member of the legal profession. As it is, their labour has been labour in vain; and we have directed attention to its erroneous results only to utterly repudiate its authority, and to hope that it may soon be replaced by some more carefully collated and competent standard, emanating from the same body.

Suggestion
to avoid liti-
gation as to
extent of di-
lapidations.

There is however one practical suggestion contained in this report, which, if generally adopted, would at once put an end to all question as to the extent of the dilapidations to be valued; and inasmuch as the principal source of litigation on this subject, is with relation to the state of the property at the commencement of the tenancy, it is obvious that much trouble, expense, and annoyance to all parties might be avoided by conforming to the proposed remedy, which we cordially recommend to the consideration of our readers, and which runs as follows:—

“To obviate this difficulty, in a manner which the council believe will be found applicable to most cases which can occur, they propose that, as a preliminary to the execution of leases in general (*b*), the premises to be leased should be surveyed, both on the part of the lessor and lessee, and that a schedule should be drawn up, signed by them or their agents, specifying the actual state of every part of the buildings, by reference to which the dilapidations should be assessed at the end of the term. Such a document universally accompanies agreements for the occupation of houses in France, under the name of the ‘*état des lieux*,’ and its

(*b*) And wherefore not also of agreements?

adoption is strongly recommended by the council to the consideration of the profession at large, as a means of simplifying a question usually attended with much complexity, and seldom satisfactorily determined. As it is probable, in the existing state of the law, that this measure would generally originate with the lessee, it might be understood that he alone should bear the expense; and, on this condition, no landlord could reasonably object to become a party to it."

It appears then to us that the only safe system to be adopted, in laying down a rule for the valuation of dilapidations, is by giving a schedule or specification of all the various items of reinstatement (each under the heading of its own peculiar trade) to which the relative position of any parties may render them liable; since it is altogether absurd to endeavour to set forth any one schedule equally adapted for a tenant from year to year, and for a tenant for a term of years.

At the same time it must be borne in mind that DILAPIDATIONS wholly differ from REPAIRS, inasmuch as that the latter may occur continually under the repairing clause of a current lease,—whilst the former can only be demanded once, viz., at the end of the term. But in the course of any legal question of amount as to a valuation of dilapidations, evidence of notices of any specifications to perform repairs will always materially affect the point of the dilapidations, either in increase or in reduction of their amount, as the case may be.

It must be premised, that in the ensuing sections, all dilapidations are presumed to fall upon the landlord, unless specified as belonging to the tenant; and it must moreover be borne in mind, that as local custom very properly exercises a powerful influence over all valuations, so the rules hereinafter laid down must be taken as being subject to such modification as the peculiar custom of the "locus in quo," may render necessary.

Schedules of dilapidations must vary with each legal position.

Difference of DILAPIDATION and REPAIR.

Landlord's and Tenant's dilapidations.

Influence of local custom on valuations of dilapidation.

PART I.

ASSESSMENT AND VALUATION OF DILAPIDATIONS OF CHURCH PROPERTY.

SECT. I.—*In Case of an Archbishop, Bishop, Dean, Prebend, Rector, or Vicar.*

Liabilities of incumbents. THE law, as has been already shown (a), has imposed heavy responsibilities on incumbents in the matter of repairs and dilapidations.

And it must be observed, that being bound down by no particular covenants to repair, the law assumes in their case a heavier responsibility from this fact, and visits the results of negligence or carelessness the more severely; in direct opposition to the custom in lay tenancies, where default of special covenants lays the burden of repairs upon the landlord.

Specification of Dilapidations, to which an Incumbent, other than a Curate, is liable.

Bricklayer. CUT out and underpin defective foundations; putting in concrete, and renewing footings where necessary; needling and shoring up the walls during the progress of the work. Cut out, replace, and make good all defective brick-work; taking down, and rebuilding all such portions as are so far cracked, split, bulged, or battering, as to be incapable of being effectually repaired. Take out and renew, or supply all defective pointing, or open joints in the walls, gables, parapets, and chimney-shafts. Replace broken chimney-pots, and reset those which are loose.

Examine, empty, cleanse, and repair all drains and cesspools. Clear and cart away all accumulations of soil, dirt, earth, and rubbish.

(a) *Ante*, chap. I. sect. i. p. 280.

Replace all broken or defective slates or tiles, and Slater. refix those which are loose ; stripping, and re-slating, or re-tiling, and renewing the lathing where necessary. Restore all defective fillettings, and external pointing to tiling.

Examine, repair, and replace all broken or defective Carpenter. timbers, joists, girders, brestsummers, beams, story-posts, rafters, purlins, &c. Fix and restore to a proper level, all timbers out of the level, or not perpendicular.

Secure, make good, repair, and reinstate all decayed, defective, broken, or loose weather-boarding, wood-fences, paling, dormer door and window-frames, windows, sills, skylights, water-trunks, wooden gutters, roofs, and roof-timbers, cisterns, and cistern-covers, gutters, flats, and other external timber and wood-work.

Secure and make good, repair and reinstate all gates and gate-posts, &c. Restore the level of the hangings, and renew all defective fastenings to the same.

Secure and make good all decayed, broken, or Joiner. damaged flooring. Secure, make good, repair, or reinstate, all damaged, decayed, broken, or defective joiner's work ; and refix such as may be loose. Re-hang all doors and shutters, where requisite, and repair the fastenings of the same. Examine, repair, and reinstate all window-frames, linings, backs, sashes, beadings, sash-frames, lines, pullies, weights, and sash-fastenings. Repair broken stair-treads, nosings, risers, &c. ; and secure those which are loose. Replace broken balusters, hand-rails, newels, and spandrils.

Secure, make good, and reinstate all damaged, Plumber. warped or loosened lead-work. Solder and make good all cracks. Reinstall, and replace the deficiencies of all hips, ridges, valleys, flats, gutters, flashings, aprons, dormer tops and cheeks, cisterns, cistern heads, rain-water pipes and heads, sinks, supply and waste-pipes, &c.

Make good all damage to pumps, water-closet apparatus, soil-pipes, traps, &c. ; and reinstate and leave them effective, and fit for immediate use.

Glazier.

Reinstate all broken and cracked glass, make good all puttying and back puttying, reinstate all lead-work to skylights or windows, and renew bandings and cementing where necessary.

Mason.

Make good all defective or broken coping to walls, gables, parapets, and chimnies, and reinstate and refix all such as may be loose. Reinstate all cornices, blocking courses, string courses, plinths, lintels, sills, area or other curbs and copings, and balcony landings; and generally reinstate all stone work, whether external or internal.

Examine, repair, and reinstate all paving, channels, sinks, sinkstones, shelves, bearers, &c. ; make good all broken nosings of steps, and repair and reinstate all broken or uneven landings.

Make good, repair, and reinstate or renew all chimney-pieces, slabs, hearths, and inner hearths.

Replace defective cramps, make good defective lead, and point up all decayed or open joints.

Pavior.

Reinstate all paving and channeling to a proper level.

Plasterer.

Reinstate all defective, damaged, or decayed plastering, cornices, mouldings, enrichments, compo or cement work, both externally and internally; and recolour the same where defaced by repairing or otherwise.

Smith and
ironmonger.

Make good, and reinstate all broken or damaged railings, gates, gratings, skylights, fanlights, sashes, casements, saddle-bars, window-bars, guards, balconies, verandahs and other external iron-work.

Reinstate all defective hangings and fastenings, both external and internal. Repair, and reinstate all iron-balusters damaged or broken; replace damaged iron-girders, beams, story-posts or ties; reinstate all iron-pipes, eaves-guttering, cistern-heads, &c. ; take up, cleanse, and reinstate all drain-mouths and stench-traps.

Repair and reinstate iron doors, shutters, shelves, bearers and frames. Make good all bolts, bars, locks, and other items of ironmongery, and replace lost or defective keys.

Reinstate all canvas and papering torn or so damaged as to be unfit for use. Paper-hanger.

Paint all external wood and iron-work which has not been painted within the last three years; make good the painting where damaged by the piecing or repairs of other trades, or where the work has been defaced from any cause. Painter.

Make good all defects of every kind in respect of irremovable fixtures, also in respect of all offices, outbuildings, stables, coachhouses, piggeries, and other buildings; but not in respect of the glebe land or garden. Generally.

* * Also, where the repair of the chancel attaches to the incumbency, it must be made good in a similar manner with, and to the full effect of the foregoing specification.

SECT II.—*In the Case of a Curate.*

A CURATE, like a tenant at will, is liable for no repairs; but in certain cases, already cited (a), a portion of his stipend may be retained by the patron of the benefice, for the purposes of necessary repair. Liabilities of a curate.

(a) *Ante*, chap. I. sect. i. p. 280.

PART II.

DILAPIDATIONS OF LAY PROPERTY.

SECT. I.—*In Case of a Tenant at Will.*

A TENANT at will is by the very nature of his tenancy exempted from all liability for dilapidations of any kind. Even in case of wilful damage no remedy exists against him in this form; but the landlord, having repaired the house, may recover damages by an action on the case.

SECT. II.—*In Case of a Tenant from Year to Year.*

A TENANT from year to year is liable for all dilapidations consequent upon his tenancy, resulting from avoidable accident, carelessness, negligence, or wilful damage (*a*), but not from unavoidable accident, nor from the action of the elements. If, however, a tenant from year to year renews his tenancy without giving notice to his landlord of dilapidations or defects of repair, he adopts them as his own, and so renders himself liable to their consequences; and this is no hardship, since it is obvious that every tenant has the remedy for all these difficulties in his own hands, by refusing to enter upon the tenancy of any house in an imperfect state of repair.

Specification of Dilapidations to which a Tenant from Year to Year is liable.

Bricklayer
and slater.

REPLACE all slates or tiles broken by accident; (as in the case of felling a tree, from such tree, or any portion of it falling upon the roof.) Repair, replace, secure, and make good all defective eaves-guttering. Remove all accumulations of soil, earth, or rubbish

(a) See *Ante*, chap. II. p. 296.

(except the emptying of cesspools, which is the customary duty of the landlord).

Make good all main-timbers, weather-boarding, Carpenter. and wooden fences, which may have been broken by avoidable accident, or cut into purposely. Secure and rehang all defective or loose external doors, gates, door-posts, or gate-posts, and make good all defective hinges and fastenings to the same.

Secure and make good all loose or broken floors. Joiner. Secure and make good all joiner's work broken or damaged during the tenancy. Rehang all doors and shutters, loose, or out of the level. Make good broken skylights, window-frames, sashes, beadings, &c., and refix those which are loose. Replace broken or defective lines, weights, pullies, and sash fastenings. Repair broken balusters, hand-rails, newels, and stair-nosings.

Secure and make good all lead-work warped, Plumber. loosened, or damaged. Examine, cleanse, and repair eaves-guttering, rain-water pipes and heads. Make good all damage to pumps, watercloset apparatus, soil-pipes, traps, &c., and leave them free, clear, and perfectly fit for use.

Reinstate all cracked or broken glass (excepting Glazier. plate-glass, which need not be replaced, unless having two open cracks); make good all lead-lights bent, loosened or damaged.

Reset, and make good all wall-copings disturbed or Mason. broken by the use of ladders, &c.; and all area or railing-curbs broken by accident. Repair, fill in, and make good all cornices, lintels, sills, string-courses, plinths, and other external stone-work or dressings, damaged otherwise than by the fair wear and tear of time. Make good all broken nosings to steps and landings, and all chimney-pieces, slabs, and hearths, where damaged otherwise than by the settling or giving way of the house. Refix all loose masonry; and re-lead, or point up all open joints.

Repair, or replace all broken York or flat-stone Pavior. paving. Supply all deficient pavings and channels. Reset all channels out of the level.

Plasterer.

Replace all plastering, moulding, or enrichments damaged by violence. Recolour, where such repairs have been executed. Recolour generally all plastering which has not been coloured within seven years, or which has been damaged by water, smoke, or otherwise.

Smith and
ironmonger.

Make good all broken railings, gates, gratings, iron skylights, fanlights, and sashes. Rehang gates, where deficient or loose; and refix the fastenings, stops, and catches of the same, where necessary. Repair all eaves-guttering, pipes, rain-water pipe-heads, &c., where necessary. Reinststate, repair, or replace all damaged ironmongery, bells, wires, cranks, pullies, locks, bolts, bars, hinges, fastenings, &c., and replace all lost keys.

Painter and
paper-
hanger.

Paint all external wood, stucco, and iron-work, which has not been painted within four years last past. Repair all papers damaged by violence, carelessness, neglect, or any cause other than the actual settling, subsidence, or decay of the house.

* * Paperings damaged from the effect of defective walls, walls built of old materials, or new walls used before they are perfectly dry, need not be replaced.

Generally.

Repair all damages to the premises or fixtures arising from avoidable accident, neglect, carelessness, or malice; that is to say, all damage for which the tenant cannot account in some reasonable manner.

SECT. III.—*In Case of a Tenant for a Term of Years.*

Extent of
liability

THE situation of a tenant for a term of years, in default of any specific agreement as to repairs, is similar to that of a tenant from year to year certain, as detailed in the preceding section.

The only variation will be, that the responsibilities of a tenant for a term will increase in proportion to the length of his term, and that he will be liable not only for any evident neglect but also for its consequences, immediate and remote; and in proportion as

by the length of term the landlord's difficulties of specification are increased, so will be the burden of the tenant's liabilities; since it may be fairly presumed that no person would enter upon the occupation of a dilapidated dwelling for a term of years, without being cognizant of its state of repair.

These considerations being duly taken into account, the specification given in the preceding section (a), for the case of a tenant from year to year certain, will equally apply to that of a tenant for a term of years.

Specification as in the case of tenant from year to year.

SECT. IV.—*In Case of a Tenant under Covenant to Repair.*

THE liabilities of a lessee under covenant to repair, are, as has been already shown (b), almost unlimited. The extent of the same lessee's repairs of dilapidation must therefore be estimated in a like proportion.

Extent of liability.

If the premises be destroyed by fire, or tempest, either partially or wholly, a lessee under covenant to repair is liable to restore them; unless fire and tempest be specially excepted.

In case of fire.

If the premises should fall down, from the breaking in of a sewer, or any other cause, the lessee is bound to restore them (c), but he may employ the old materials for that purpose.

If premises should fall.

A tenant under covenant to repair is liable for all damage done, as well to his own premises, as to those of his neighbours, by the fall of any ruinous chimney, gable, parapet, or wall, excepting a party-wall (d).

Ruinous chimneys or walls.

(a) *Ante*, p. 334.

(b) *Ante*, chap. II. sect. ii. p. 297.

(c) The lessee, of course, preserving his remedy (if any) against other parties; we are dealing here only with the mutual obligations of lessors and lessees.

(d) Metropolitan Buildings Act, 7 & 8 Vict. c. 84, s. 44.

Specification of Dilapidations to which a Tenant under Covenant to Repair is liable.

Bricklayer.

CUT out, and underpin defective foundations; putting in concrete, and renewing footings where necessary; needling and shoring up the walls during the progress of the work. Cut out, and replace, and make good all defective brick-work; taking down and rebuilding all such portions as are so far cracked, split, bulged, or battering, as to be incapable of being effectually repaired. Take out and renew or supply all defective pointing, or open joints in the walls, gables, parapets, and chimney-shafts. Replace broken chimney-pots, and reset those which are loose.

Examine, empty, cleanse, and repair, all drains and cesspools. Clear and cart away all accumulations of soil, dirt, earth, and rubbish.

Slater.

Replace all broken or defective slates or tiles, and refix those which are loose; stripping and re-slating or retiling, and renewing the lathing where necessary. Restore all defective fillettings, and external pointing to tiling.

Carpenter.

Examine, repair, and replace all broken or defective timbers, joists, girders, brestsummers, beams, story-posts, rafters, purlins, &c. Fix and restore to a proper level all timbers out of the level, or not perpendicular.

Secure, make good, repair, and reinstate all decayed, defective, broken or loose weather-boarding, wooden fences, paling, dormer door and window-frames; windows, sills, skylights, water-trunks, wooden gutters, roofs, and roof timbers, cisterns, and cistern-covers, gutters, flats, and other external timber and wood-work.

Secure and make good, repair and reinstate all gates and gate-posts, &c.; and restore the level of the hanging, and renew all defective fastenings to the same.

Joiner.

Secure and make good all decayed, broken, or damaged flooring. Secure, make good, repair, and

reinstate, all damaged, decayed, broken, or defective joiner's work; and refix such as may be loose. Rehang all doors and shutters, where requisite, and repair the fastenings of the same. Examine, repair, and replace all window-frames, linings, backs, sashes, beadings, sash-frames, lines, pullies, weights, and sash-fastenings. Repair broken stair-treads nosings, risers, &c.; and secure those which are loose; replace broken balusters, hand-rails, newels, and spandrils.

Secure, make good, and reinstate all damaged, Plumber. warped or loosened lead-work. Solder and make good all cracks. Reinstall, and replace the deficiencies of all hips, ridges, valleys, flats, gutters, flashings, aprons, dormer tops and cheeks, cisterns, cistern-heads, rainwater-pipes and heads, sinks, supply and waste-pipes, &c.

Make good all damage to pumps, water-closet apparatus, soil-pipes, traps, &c.; and reinstate and leave them effective, and fit for immediate use.

Reinstall all broken and cracked glass, make good Glazier. all puttying and back puttying. Reinstall all lead-work to skylights or windows, and renew bandings and cementing where necessary.

Make good all defective or broken coping to walls, Mason. gables, parapets, and chimnies, and reinstate and refix all such as may be loose. Reinstall all cornices blocking-courses, string-courses, plinths, lintels, sills, area or other curbs and copings, and balcony landings; and generally reinstate all stone-work, whether external or internal.

Examine, repair, and reinstate all paving, channels, sinks, sink-stone, shelves, bearers, &c.; make good all broken nosings of steps, and repair and reinstate all broken or uneven landings.

Make good, repair, and reinstate or renew all chimneypieces, slabs, hearths, and inner hearths.

Replace defective cramps; make good defective lead, and point up all decayed or open joints.

Reinstall all paving and channeling to a proper Pavior. level.

Plasterer. Reinstall all defective, damaged, or decayed plastering, cornices, mouldings, enrichments, compo or cement work, both externally and internally: and recolor the same where defaced by repairing or otherwise.

Smith and Ironmonger. Make good, and reinstall all broken or damaged railings, gates, gratings, skylights, fanlights, sashes, casements, saddle-bars, window-bars, guards, balconies, verandahs and other external iron-work.

Reinstall all defective hangings and fastenings, both external and internal. Repair and reinstall all iron-balusters damaged or broken. Replace damaged iron girders, beams, story-posts or ties; reinstall all iron pipes, eaves-guttering, cistern-heads, &c. Take up, cleanse, and reinstall all drain-mouths and stench-traps.

Repair and reinstall iron doors, shutters, shelves, bearers and frames. Make good all bolts, bars, locks, and other items of ironmongery; and replace lost or defective keys.

Paper-hanger. Reinstall all canvas and papering torn, or so damaged as to be unfit for use.

Painter. Paint all external wood and iron-work which has not been painted within the last three years; make good the painting where damaged by the piecing or repairs of other trades, or where the work has been defaced from any cause.

Generally. Carry out the preceding specification in respect of all offices, out-buildings, stables, coach-houses, kennels, green-houses, hot-houses, summer-houses, boat-houses, &c.

And where the premises have been used for any special and particular purpose, as a wharf, or manufactory, &c., add all such particulars as may occur from the peculiar nature of the premises; or of the uses to which they have been applied.

SECT. V.—*In Case of a Tenant-for-Life.*

A TENANT for life of an estate is looked upon by the law in the light of a trustee for that estate ; being entitled to use it for his own proper purposes, but not to do any wilful damage, nor to suffer any damage to accrue from carelessness, or neglect.

Under these circumstances a tenant-for-life is bound to transmit to his successors the estate committed to his stewardship, without waste, in a state equal at least to that in which he received it ; reasonable wear and tear always excepted.

The heir of a tenant-for-life can, therefore, recover damages for dilapidations from the executor, administrator or other representative of the tenant-for-life, in the same manner as an incumbent of church property is allowed to recover such damages of his predecessor. To that schedule and specification we, therefore, refer our readers, as altogether appropriate to the present case (c).

At the same time it must be borne in mind, that the damages arising from the negligence or waste of the tenant-for-life, must be real and not ideal ; or in other words, substantial, not ornamental (d) ; otherwise the law will protect the tenant-for-life, who may either not have needed, or may have been in other respects regardless of the refinements of life, or of the requirements of his station in society.

SECT. VI.—*Agricultural Dilapidations.*

AGRICULTURAL tenancies differ from others only in that they are usually to be interpreted more favourably towards the tenant ; since, inasmuch as the land without buildings would be comparatively valueless, those buildings are never separated in agricultural

(c) *Ante*, page 330.

(d) *Wise v. Metcatfe*, 10 B. & C. 299.

valuations for rent, but included at the highest price of the land, according to the area they cover.

Liabilities in other respects.

In other respects the liabilities of the tenants are the same as those already set forth in the preceding sections of this chapter.

Effect of local custom.

At the same time it must be remembered that all agricultural tenancies are more or less specially affected by local custom, which, in the absence of any agreement, allots some repairs to the landlord and others to the tenant; and which, in some cases, will prove as powerful as any special covenant.

Dilapidations of farming.

Damages arising from neglect, waste, ignorance, or bad farming of the land, may be assessed and valued as a portion of the dilapidation in an action for breach of covenant (*e*).

Ornamental repairs.

No ornamental repairs are at any time included in the liabilities of agricultural tenancy.

Preceding schedules may be adopted "mutatis mutandis."

With these modifications,—and such adaptations, changes, or alterations, as may be rendered necessary either by peculiar customs of the locality, or by special agreement between the parties,—the preceding schedules may with perfect safety be adopted.

SECT. VII.—*Dilapidations of Fixtures.*

EVERY tenant is bound to preserve his landlord's fixtures in a like ratio with his other property; therefore, whatever may be the nature of his tenure, it will affect his liability for dilapidations of fixtures, proportionately with his liability for all other dilapidations.

The extent of this liability must therefore be determined, first, by the nature of the fixtures, whether

(*e*) It may be as well here to observe, that no action can be maintained against a clerical incumbent for mismanagement of the agricultural or glebe land, &c., attached to his benefice.

belonging to the tenant or the landlord ; secondly, by the provisions of the tenancy.

The latter of these considerations, and its respective duties, has been already amply detailed, in the preceding part of our treatise on dilapidations.

The first has also been set forth in a great degree in the definition of removable and irremovable fixtures ; but for the purpose of ready reference we repeat it here.

*Schedule of Fixtures, for Dilapidations of which a
Tenant will be generally liable.*

ADDITIONAL BUILDINGS.

AGRICULTURAL BUILDINGS.

ALE-HOUSE BAR.

BARNs, SUBSTANTIALLY AFFIXED (*f*).

BEAST-HOUSES.

BENCHES AFFIXED, AS IN A TAP-ROOM.

BINNS, and BINN DIVISIONS OF BRICKWORK.

Box planted in a garden.

BRICKS, laid in mortar or cement.

CARPENTER'S SHOP.

CART-HOUSES.

CELLAR BINNS, divisions, and shelves, built of brickwork.

CHIMNEY-PIECES, original (*g*).

CONSERVATORIES.

CORNICES, substantially affixed, or worked in plaster, cement, or stone, and as accessories to other work.

COW-SHEDS.

CUCUMBER FRAMES, substantially affixed.

DAIRY-SHELVES and PILLARS of brickwork.

DOORS.

(*f*) The term "substantially affixed" is used throughout this schedule, to imply fixtures for which foundations have been opened, or for the reception of which the freehold whether of soil, or bricks, or wood, or stone, has been broken or cut into ; or, where the fixture is affixed by mortar, cement, cramps, standards, standfasts, or some other permanent setting.

(*g*) That is to say, "the original chimney-piece." An original chimney-piece of stone may be replaced by one of marble ; but the tenant must restore the original one in good condition ; or in default of so restoring it, he must leave that which he has put up.

Schedule. DRESSERS.

FASTENINGS to gates, &c.

FENCES, living.

FENCES, dead, if substantially affixed, as post and rail, &c.

FLOWERS planted, not in pots.

FOLDYARD WALLS and GATES.

FRUIT-TREES, standard, planted for other than nursery purposes ; or purposes of sale.

FRUIT-TREES trained against a wall.

FUEL HOUSE.

GARDEN-FRAMES, substantially affixed.

GIBDOORS.

GLASS-WINDOWS.

HAY-RACKS.

HEARTHES, both front and back.

HEDGES.

HEN-HOUSE.

HINGES of doors, not removable.

KEYS, provided with the premises demised.

LATCHES, ditto

LOCKS, and lock-furniture ditto

MACHINERY, forming a substantial part and parcel of the freehold, as in a corn-mill.

MANGERS.

MILLSTONES.

MELON-FRAMES, substantially affixed.

PARTITIONS of every kind.

PAVEMENTS.

PIGEON-HOUSES.

PIGGERIES.

PINERIES, substantially affixed.

PUMP-HOUSES, or HOUSINGS.

RACKS.

RINGS.

SHUTTERS.

SLABS, necessary to the freehold ; such as the slab in front of the grate, &c.

STRAWBERRY-BEDS.

TOWER WINDMILLS.

VERANDAHS, substantially affixed.

VENTILATORS.

WAGGON-HOUSES.

WAINSCOT, substantially affixed.

WELLS.

WELL-COVERINGS, or HOUSINGS.

WINDOWS.

* * And to the foregoing must be added all Fixtures Scheduled in, or otherwise specially reserved by the Lease.

INSURANCE.

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INSURANCE AGAINST FIRE.

CHAPTER I.

OF THE NATURE OF THE CONTRACT, AND THE PARTIES TO IT.

FIRE insurance is a contract by which the insurer, in consideration of a certain premium received by him, either in a gross sum, or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain in his houses, or other property in buildings, stock, goods, merchandize, and profits in trade (*a*), by fire, during a period of time limited by the policy. ^{Nature of the contract.}

The terms of the indemnity are contained in the policy itself, and in certain rules established and acted upon by the insurer, a copy of which is furnished to every person at the time of his effecting an insurance: and which are considered as incorporated in the policy which refers to them, so as to qualify the rights and liabilities of the parties and regulate the conditions of the agreement (*b*).

Insurances against fire are most commonly effected by societies formed for that purpose; of which there are many, as well in London (*c*), as in other cities and towns of the United Kingdom. Each company is governed by certain laws and regulations framed by the members; which, in some respects, differ materially from each other, both as regards the terms ^{Insurance Companies.}

(*a*) In re *Sun Fire Office*, 3 N. & M. 819, S. C. nom. In re *Wright and Pole*, 1 Ad. & E. 621.

(*b*) *Worsley v. Wood*, 6 T. R. 710; 2 Hy Bl. 574. And see also *Oldman v. Bewicke*, 2 Hy. Bl. 577, n.

(*c*) For a List of these, see the Schedule, *post*. Chap. VIII.

of insurance, and the mode of dividing profit and loss among the proprietors. These companies are divisible into two great classes, those of which every insured person becomes a member, sharing the profit and loss of the speculation; and those, in which the insurance is effected entirely at the risk of the society, the insurer having no interest whatever in the affairs of the Company. Of the former class are the Hand-in-Hand, The County, The Farmers, The Imperial, and The Westminster Fire-Offices, for the insurance of goods and buildings; and the Union Fire-Office, for the insurance of goods. Of the latter, the principal are the London and Royal Exchange Assurance Corporations, The Sun, The Phoenix, The Union, The Globe, and The British.

Who may insure.

As regards the parties insured, there is no restriction whatever beyond that which the policy of the law has imposed in every case of insurance; namely, that the insured shall be interested in the property sought to be protected. This enactment was passed to prevent insurances being effected by uninterested parties by way of a wagering or gambling transaction. Thus, by the 14 Geo. III. c. 48, it is provided: First, "that no insurance should be made by any person, body politic or corporate, on lives, *or any other event*, wherein the person for whose benefit or on whose account the policy is made has no interest." Secondly; that in every policy on lives, *or other events*, the name of the person interested, or on whose account it is made, must be inserted. Thirdly; that no greater sum should be recovered, or received from the insurer, than the amount of the interest of the insured."

The word "interest" in the foregoing statute, means pecuniary interest in the event insured (*d*); and this interest must exist at the time of insuring as well as at the time when the fire happens, in order to entitle the party to recover (*e*).

(*d*) *Halford v. Kymer*, 10 B. & C. 724.

(*e*) *Sadlers' Company v. Badcock*, 2 Atk. 555.

A policy of insurance against fire is not from its nature assignable, and the interest in it cannot be transferred, unless the previous consent of the insurers be obtained ; and where the insured dies, the interest remains to his heir or personal representatives to whom the property insured may respectively belong : provided that, before any new payment be made, they procure their right to be indorsed on the policy, or the premium to be paid in their name (*f*).

Policy not
assignable
without
consent.

In order to entitle the plaintiff to recover on a policy of insurance against fire, it must appear that the policy was duly stamped, according to the provisions of the 55 Geo. III. c. 184, schedule, Part I.

By the 3 & 4 Wm. IV. c. 23, insurances on farming stock were exempted from stamp-duties.

(*f*) 2 Atk. 554.

CHAPTER II.

OF THE PROPERTY INSURED, AND OF ITS WARRANTY
AND REPRESENTATION.

What may be
insured.

THE principle of insurance being applicable to every species of risk against the consequences of which it may be thought desirable to provide, will include every kind and class of property liable to be injured by the casualty insured against. Hence, an indemnity from loss by fire may be secured with respect to buildings of all descriptions, goods, merchandise, furniture, wearing-apparel, agricultural implements and stock, machinery, and whatever else may be consumed by fire. Besides this, the remoter consequences of the calamity may be provided for; and the profits of trade may be insured during the rebuilding of premises destroyed by fire, provided they are expressly included in the policy (*a*).

Warranty
and repre-
sentation.

Must be cor-
rect.

It is a first principle of the law of insurance that when a thing is warranted to be of a particular nature or description, it must be exactly such as it is represented to be, otherwise the policy is void. Thus where a mill was insured as being of one class, and turned out to have been of another, at the time it was insured, it was held, that an action on a policy against a loss by fire could not be sustained, since, whether the misrepresentation was in a material point or not, or whether the risk was equally great in the one class and in the other, was wholly unimportant, the only question being whether the building was *de facto* that which was insured (*b*). If, however, the mistake or misrepresentation arose from

(*a*) In *re Sun Fire Office*, 3 Nev. & M. 819, S. C. nom. In *re Wright and Pole*, 1 A. & E. 621.

(*b*) *Newcastle Fire Insurance Company v. Macmorran*, 3 Dowl. 255.

the default of the insurer or his agent, the policy will not be vitiated (c).

A very slight variation in the description of the property, however, will not be material, if it be substantially correct,—if it makes no difference in the terms of insurance,—and if there be no fraudulent intention. Thus if an agricultural building be described as a barn, which is not strictly so, the same premium being required for the building in question as for a barn, the policy will not be vacated (d). Slight errors.

Where a policy was effected on “stock in trade, household furniture, linen, wearing-apparel, and plate,” the party insured not being a linen-draper; this was held not to protect linen-drapery goods, subsequently purchased on speculation; the word “linen,” in the policy evidently meaning, from the terms with which it was accompanied, household linen, or linen used by way of apparel (e). Construction.

It is not only necessary, moreover, that the description of the property to be insured should be correct and precise, but there must also be a faithful representation of all material facts by which the terms of the proposed insurance may be affected. Any fraudulent suppression or wilful mis-statement of a circumstance by which the amount of the premium may be determined will utterly vitiate the policy; and too much caution, therefore, cannot be used in conveying to the insurers with a scrupulous fidelity an account of every fact which may ultimately influence their judgment in deciding on the terms on which they are willing to indemnify the insured. Material facts.

Thus, where a person living abroad had two warehouses, and wrote to this country to effect an insurance upon one of them only, without stating, as was the fact, that a house nearly adjoining it had been on fire on that evening, and that there was danger Rufe v. Turner.

(c) *Newcastle Fire Insurance Company v. Macmorran*, 3 Dowl. 255.

(d) *Dobson v. Southby*, M. & M. 90, Tenterden. See also 1 R. & M. 92.

(e) *Watchorn v. Langford*, 3 Camp. 422. *Ellenborough*.

of the fire again breaking out; and sent his letter after the regular post-time;—the fire having broken out again on the day but one next following, and consumed the warehouse in question, the owner was held not entitled to recover, having been guilty of a material concealment, although the letter was written without any fraudulent intention, and the terms of the insurance did not expressly require such a communication (*f*).

Friedlander
v. London
Assurance
Company.

Goods insured were described in the policy to be in the dwelling-house of the insured; the insured having only one room, as a lodger, in which the goods were. This was held a correct description within the condition that “the houses, buildings, or other places, where goods are deposited and kept, shall be truly and accurately described,” such condition relating to the construction of the house, and not to the interest of the parties in it (*g*).

Doe dem. Pitt
v. Laming.

A coffee-house is not an inn within the meaning of a policy enumerating the trade of an inn-keeper amongst others as doubly hazardous (*h*).

(*f*) *Rufe v. Turner*, 2 Marsh. 46 ; 6 Taun. 338.

(*g*) *Friedlander v. London Assurance Company*, 1 M. & R. 171. Tenterden.

(*h*) *Doe dem. Pitt v. Laming*, 4 Camp. 76. Ellenborough.

CHAPTER III.

OF THE RISK INSURED.

IF faithful representations have been made to the insurers, and the conditions of the policy have been substantially and *bond fide* fulfilled by the insured, both parties to the contract of assurance are aware of the risk insured against, and the one will be bound to give, and the other will be entitled to receive compensation for any loss which may be sustained by any casualty included in the policy. But, as we have seen, there must be a correct description of the property insured, and an enumeration of every material circumstance connected therewith, before the policy is effected. Moreover the conditions of the policy must be afterwards faithfully complied with, in order to render the insurer liable in case of loss. He must always know the risk he insures against; and therefore if anything occur, through the wilfulness or negligence of the insured, during the currency of the policy, to increase that risk and the insurer remains uninformed of it, he will not be liable for any loss which may accrue subsequently. In order to deprive the insured, however, of the right to recover upon his policy, there must be distinct proof of a breach of the established conditions.

Conditions of
policy to be
observed.

Where premises had been insured at a rate of premium charged for those in which no fire is kept and no hazardous goods deposited, the condition was held to refer to the habitual use of fire, and the ordinary deposit of hazardous goods. Therefore, where a policy was effected on an agricultural building, described in the policy as "a barn, situate in an open field, timber built, and tiled," and a loss happened in consequence of the improper lighting of a fire, and bringing a quantity of tar into the

Dobson v.
Southby.

building, for the purpose of tarring it; the loss was held to be within the policy, the deposit of the tar-barrel for this temporary purpose not being a deposit of hazardous goods within the meaning of the policy (a).

Shaw v. Roberts.

A fire policy contained the usual conditions of avoidance in case of misrepresentation, or of any alteration in the buildings insured, or in the mode of using them, without notice to the office. A kiln used for drying corn, being part of the premises insured, was used on one occasion by the permission of the insured, (who, however, received no remuneration for the permission), for the purpose of drying bark,—a more dangerous process than that of drying corn. In consequence of the fire kindled for this purpose, the premises were burnt down, and the assured was held entitled to recover, although the fire was occasioned by his own negligence, he not having been guilty of fraud or misrepresentation, nor of any breach of the conditions of the policy, which had reference to some permanent alteration in the mode of employing the buildings, and not to a single instance such as the present; which did not render necessary any notice to the insurers (b).

Whitehead v. Price.

A policy of insurance on a mill, mill-wright's work, standing and going gear, engine-house, and steam-engine, recited, "that the aforesaid buildings were brick-built, warmed by steam, lighted by gas, and worked by the steam-engine above mentioned, in tenure of one firm—standing apart from all other mills, and worked by day only." In an action brought to recover for a loss by fire; it was held, that this recital did not mean that the steam-engine was not worked by night (c).

Mayall v. Mitford.

In a policy of insurance against fire, upon cotton mills, "it was warranted that the said mills were

(a) *Dobson v. Southby* & Ors. M. & M. 90. Tenterden.

(b) *Shaw v. Roberts*, 1 Nev. & P. 279; 6 Ad. & E. 75; W. W. & D. 94; 1 Jur. 6.

(c) *Whitehead v. Price*, 2 C. M. & R. 447; 1 Gale 151; 5 Tyr. 825.

brick-built, and stated that they were warmed and worked by steam, lighted by gas, worked by day only." It was held, that the stipulation that the mill should be worked by day only, meant that the usual cotton manufacture, carried on by mills in the daytime, should not be carried on at night; and that it was consequently no breach of this warranty, that on one occasion, in order to turn machinery in an adjacent building, the steam-engine (which was not in the mill, but in an adjoining building) and certain perpendicular and horizontal shafts in the mill were at work; and that a plea to a declaration on the above policy, that a certain steam-engine, and certain perpendicular and horizontal shafts, then being respectively parts of the said mills, were, without consent of the defendants, worked by night, was bad (*d*).

It would appear from the following case, which has been very recently decided in the Court of Common Pleas, that no alteration in the mode of using the premises, and no introduction of dangerous articles thereon subsequent to the effecting of the insurance, and without notice to the company, would vitiate the policy, if there were no fraud on the part of the assured. Of course it would be a question for the jury to determine in each individual case, how far such increase of risk might take place without any fraudulent intention in the mind of the person insured; and in proportion as the alterations were material and perilous would be the probability of fraud. But the time at which they were introduced, and all the circumstances of the case, would require consideration before justice could be done between the parties: but if, ultimately, the jury negatived the charge of fraud, the assured would be entitled to recover for a loss, although occasioned by the very alterations of which complaint is made (*e*).

To deprive insured of their remedy there must be fraud.

A policy of insurance was effected for a year, at Pimm & anor. v. Reid & ors.

(*d*) *Mayall v. Mitford*, 1 Nev. & P. 732; 6 Ad. & E. 670; W. W. & D. 310.

(*e*) See *Shaw v. Roberts*, cited above, p. 356.

the expiration of which it was renewable, upon a paper machine, a machine-house, &c. It contained the following condition :—"In the insurance of premises which contain any steam-engine, stove, kiln, or other implement in or by which heat is produced, the construction of the same must be particularly described at the time of effecting the insurance, or, if subsequently introduced, due notice must be given to the company, and the same allowed by them, otherwise the policy would be void ; or if more than a quarter of a hundred weight of gunpowder shall be deposited at one time on the premises, the insurance shall be void. In the insurance of goods, wares, or merchandise, the building in which the same are deposited is to be described, the quantity and description of such goods, also, whether any hazardous trade is carried on, or any hazardous articles deposited therein ; and if any person shall insure his goods or buildings, and shall cause the same to be described otherwise than they really are, to the prejudice of the company, or shall misrepresent or omit to communicate any circumstance which is material to be made known to the company, in order to enable them to judge of the risk they have undertaken, or are required to undertake, such insurance shall be of no effect." The premises were destroyed by fire within the year. In an action upon the policy ; held, that neither by the common law of insurance, nor by the condition, was the policy vitiated by the circumstance that subsequent to the effecting the policy, but without fraud on the part of the assured, a hazardous trade was carried on, and hazardous articles deposited on the premises, of which no notice was given to the company (*f*).

To recover on policy there must be a loss by fire.
Austin v. Drew.

To found a claim under the policy a loss or damage by fire must occur ; therefore, where a policy is effected "against loss or damage by fire," and the register over the fires of the sugar-house, which was usually shut at night to exclude the air, was con-

tinued shut on a morning when the fires were lighted, in consequence of which the sugar was much injured by the sparks and smoke, but no ignition was produced; it was held not to be a loss within the policy, there having been no actual fire, and the injury being attributable to the mismanagement of the register (*g*). Had a conflagration ensued, however, it would have afforded no answer to the claim of the insured that the fire was occasioned by the gross neglect of a servant.

The insurers are in the habit of qualifying the indemnity which they offer by certain conditions and provisoes introduced into the policy for that purpose, the proper construction of which has been frequently the subject of litigation between the parties, and of doubt and difficulty to the courts. Thus by the terms of several insurance companies it is provided,

“that no loss or damage by fire, happening by any invasion, foreign enemy, or any military or usurped power whatever, will be made good by the insurer.” After much argument, it was decided by three judges against one, that the words, “usurped power,” apply to an invasion of the kingdom by foreign enemies, or an internal armed force in rebellion pretending to assume the power of government. The terms of the proviso do not extend to the acts of a mob riotously assembled; and therefore, where a malting-house was burned down by a mob at Norwich, which was riotously assembled in consequence of the high price of provisions, the loss was held to be within the policy (*h*).

The Sun Fire-office have used words of more extensive import, including “civil commotion;” which was held to apply to an insurrection of the people for the purposes of general mischief: and therefore, where the premises of a distiller were fired by the mob, during the riots of 1780, the loss was held not to be within the policy (*i*).

(*g*) *Austin v. Drew*, 2 Marsh. 130; 6 Taun. 436; 4 Camp. 360; Holt, 126.

(*h*) *Drinkwater v. London Insurance Compy.* 2 Wils. 363.

(*i*) *Langdale v. Mason*, Park, 657; Marsh. Ins. 794.

CHAPTER IV.

OF THE PREMIUM.

Fifteen days
allowed after
premium
due.

But the as-
sured are at
their own
risk till pre-
mium is paid.

THE premiums on policies of insurance against fire are payable annually, or, in some cases, half-yearly. In the case of an annual policy, however, insurance companies have been in the habit of allowing fifteen days beyond the time limited for the expiration of the policies during which the premium may be paid ; and, if accepted, the insurers become liable should any fire occur during that interval. Strictly speaking, the policy subsists only so long as the premium is paid ; and the fifteen days allowed after the expiration of the time of insurance are a privilege accorded to the insured, to protect them from the expense and inconvenience which may arise from their own negligence. But the latter are at their own risk during this interval ; for if any accident happens before the premium is actually paid, they stand uninsured. There would be great injustice in putting any other construction on the policy, for then the assured would have the interval to consider whether or not he would insure for the next half-year (or year, as the case might be). If no loss happened during the fifteen days, perhaps he would not insure ; but in the event of a loss during that period, he would insure after it happened. But in order to make persons liable on a contract, both the contracting parties must be bound ; whereas in the case supposed the insurers only would be bound for the fifteen days (*a*). Shortly after this decision the Royal Exchange, the Phœnix, and some other insurance companies, gave notice that they did

(*a*) *Tarleton & Others v. Staniforth & Anor.* 5 T. R. 695 ; 1 B. & P. 471 S. C.

not mean to take advantage of this judgment, but would hold themselves liable for any loss during the fifteen days which are allowed for payment of the renewed premiums upon annual policies, and others for a longer period ; but that every policy for a shorter period than a year, would cease at six o'clock in the evening of the day mentioned therein (b).

In truth, the fifteen days are allowed only in case it is intended to renew the policy ; and if the office gives notice before or during the fifteen days, that they will not accept the premium, and a loss happens afterwards during the fifteen days, the office is not liable. This was decided in the following case :—

Notice by insurers that they will not renew the policy.

By a policy under seal, referring to certain printed proposals, a fire-office insured the defendant's premises, from the 11th November, 1802, to the 25th December, 1803, for a certain premium, which was to be paid yearly on each 25th December, and the insurance was to continue so long as the insured should pay the said premium at the said times, and the office should agree to accept it. And by the printed proposals it was stipulated, that the insured should make all future payments annually at the office, within fifteen days after the day limited in the policy, upon forfeiture of the benefit thereof ; and that no insurance was to take place till the premium was paid. And by a subsequent advertisement (agreed to be taken as a part of the policy), the office engaged that all persons insured there by policies for a year or more, had been and should be considered as insured for fifteen days beyond the time of the expiration of their policies. It was nevertheless determined, notwithstanding this latter clause, (the assured having, before the expiration of the year, had notice from the office to pay an increased premium for the year ensuing, or otherwise they would not continue the insurance, and the assured having refused to pay such advanced pre-

Salvin & ors.
v. James &
ors.

mium), that the office was not liable for a loss which had happened within fifteen days from the expiration of the year for which the insurance was made, though the insured, after the loss and before the fifteen days expired, tendered the full premium which had been demanded. The effect of the whole contract, &c., taken altogether, being only to give the assured an option to continue the insurance or not, during fifteen days after the expiration of the year, by paying the premium for the year ensuing, notwithstanding any intervening loss, provided the office had not, before the end of the year, determined the option by giving notice that they would not renew the contract (c).

Insurers not
bound by
their agent;

Acey v.
Fernie.

If the premium remaining unpaid during the fifteen days is afterwards paid by the insured to a clerk or agent of the insurers, the latter are not bound by that receipt: therefore where, in an action on a policy of insurance, it appeared that the agent of an insurance company after the expiration of the time limited for the payment of the premium, and without the authority of the company, received the amount; the court held, that his authority being limited to receive premiums and not to make contracts for the company, he could not, by such receipt, raise a new contract binding on his principals and revive the policy; and that an arrangement between the company and the agent, that he should be debited as if the premiums were paid, if he failed in giving notice within the fifteen days, it being only an arrangement for keeping their agents in order, did not enable a third party, the insured, to avail themselves of it as a payment within the original time fixed by the policy (d).

(c) *Salvin & Ors. v. James & Ors.* 6 East, 571; 2 Smith, 646. And see *Doe d. Smith v. Shewin*, 3 Camp. 134.

(d) *Acey v. Fernie*, 7 M. & W. 151.

CHAPTER V.

OF RECOVERY UNDER THE POLICY.

IN order to found a claim under a policy of insurance against fire, it is necessary that there should have been a loss or damage by fire ; indeed there must have been actual ignition, as we have seen by the case already cited (*a*), where the sugar in a manufactory was greatly injured by excessive heat and smoke, occasioned by the mismanagement of a register ; yet the insured were held not entitled to recover, inasmuch as the damage was not attributable to a fire within the meaning of the policy.

In order to prove an insurance from fire at a public office in an action on the policy, it must be produced (*b*) properly stamped according to the provisions of the statute, 55 Geo. III, c. 184, schedule, Part 1. If it has been lost or destroyed, that fact must be proved before secondary evidence of its contents can be admitted. If it is in the custody of the defendant, notice to produce it should be given ; and on his refusal the plaintiff is allowed to give secondary evidence.

The insurance companies in general, reserve to themselves an option of reinstating the premises, or paying the amount of the insurance-money. And the late Building Act, 14 Geo. III., c. 78, s. 83, empowered the governors and directors of the several insurance-offices, upon the *request* of any persons interested in or entitled to any houses or buildings which might be burned down, demolished, or damaged by fire ; or upon any grounds of suspicion

Production
of policy.

Secondary
evidence.

Insurers may
rebuild, or
pay.

Effect of
Building Act,
14 Geo. III.
c. 78.

(*a*) See p. 358 ; *Austin & Anor. v. Drew*, 6 Taun. 436 ; 2 Marsh. Rep. 130.

(*b*) 3 Stark Ev. 3rd edn. 866.

that the owner or occupier, or other person, who has insured, has been guilty of fraud, or of wilfully setting houses or buildings on fire ; to cause the insurance to be laid out and expended as far as the same would go towards rebuilding, reinstating, or repairing the property burned or damaged,—unless the parties claiming the insurance-money, within sixty days after the claim was adjusted, gave sufficient security to the governors or directors of the office, that the insurance-money should be laid out and expended, or unless the insurance-money should be within that time settled and disposed of amongst the contending parties, to the satisfaction and approbation of the governors and directors.

Alchorne v. Saville.

Case of alteration of the law relating to regulation of buildings.

A house, which had been erected before the Building Act, being consumed by fire, the officers of the company with whom it was insured, instead of paying the sum at which it was insured, elected to rebuild the premises ; the Building Act, however, prevented them from re-erecting the house in exactly the same manner in which it was before the fire, and particularly from making the site and the building project into the street beyond the line of the adjacent houses :—*Held*, that the insured were entitled to maintain a bill in equity against the directors for the time being of the insurance company, for a compensation for the injury which they had sustained by reason of the inferior value of the premises erected by the insurance-office, instead of the old premises. The amount of the damage, in respect of which compensation is due, to be ascertained by means of an issue (c).

Effect of the recent building Act, 7 & 8 Vict. c. 84.

This case leads us at once to the consideration of any similar circumstances arising from the recent alteration of the law by the enactment 7 & 8 Vic. c. 84, commonly known by the name of the Metropolitan Buildings Act ; and already fully noted in a preceding portion of this work.

By reference to this Act, (d) it will be seen that a

(c) *Alchorne v. Saville*, 4 L. J. R. Chanc. 47.

(d) Section 11, *ante*, p. 14.

power of modification of its most stringent regulations, is vested in the Commissioners of Woods and Forests, so far as relates to any case of exceeding hardship; that there is moreover (*e*) a power given to the Official Referees to interfere in respect of all existing building contracts, and to modify and reconstruct them as between parties; giving a compensation to either, as the case may be. This section would, therefore, at once affect policies of insurance, which are in fact contingent contracts to build.

It however appears to us, looking at the case already cited (*f*), so pertinently to the point,—that no relief will under the New Act be given to insurers, in consideration of any additional outlay imposed upon them by that Act, provided that with such additional outlay the whole sum to be laid out still comes within the limits of the sum insured; whilst on the other hand, the insured could in any case, only recover the amount of the insurance, and no more.

The insurer must therefore elect, either to re-build in accordance with the New Act; or to pay the full amount of the policy.

Under certain circumstances, those who sign a policy of insurance, may make themselves personally liable to the insured in an action of covenant. By a policy under seal, three of the directors of a fire association admitted the plaintiff as a member of that society, upon the terms and conditions prescribed by the deed of settlement of the association; and he subscribed a certain sum as the consideration-money for one year's insurance; and it was declared that he should be entitled to a remuneration out of the society's funds in case of loss by fire happening to any property therein specified, not exceeding the sums set against each article respectively; and it was further stipulated that neither of the directors who signed the policy, nor the plaintiff, nor the

Personal
liability
policy.
By Andrews v.
Ellison.

(*e*) Section 10, page 12.

(*f*) *Alchorne v. Saville*, 4 L. J. R. Chanc. 47.

holder of it, should, as members of the society, be subject or liable to any demand for loss, excepting under the articles establishing the society, and as provided by the same. The plaintiff having sustained a loss by fire, brought an action of covenant against the directors who signed the policy; and averred in his declaration, that the funds of the association were sufficient to satisfy the amount of such loss; and the jury found a verdict for him. On an application to arrest the judgment, the court held that the declaration was sufficient, and that the defendants were liable by the terms of the policy (*g*).

Alchorne v.
Saville.

In another case, however, the policy was decided to be an instrument on which the insured could not maintain an action of covenant, and, consequently, neither the executing parties, nor the directors for the time being, were liable at law. Three persons, being trustees and directors of a fire insurance association, executed a policy to indemnify *A.* and others from loss by fire, whereby they ordered, directed, and appointed the directors for the time being to pay the loss which *A.* and others should sustain in the event of a fire happening; and the policy, among other clauses, went on to recite certain provisions containing the words, “conditions and agreements;” and *A.* and others having sustained a loss: it was held, that the policy was not an instrument or agreement upon which an action could be maintained, and, therefore, that neither the executing parties nor the directors for the time being were liable at law (*h*).

Besides an actual loss or damage by fire during the period included in the policy, it is frequently necessary, before the amount of the claim can be recovered against the assurers, to comply with certain terms contained in the proposals of the company, and which (as has been decided) form a part of the contract, when they have been referred to in the

(*g*) *Andrews v. Ellison*, 6 Moore, 199. And see *Severn v. Olive*, 6 Moore, 235.

(*h*) *Alchorne v. Saville*, 6 B. Moo. 202, n.

policy (*i*). These conditions are binding, although contained in a printed paper without stamp, seal, or signature; provided the deed of insurance refer to them (*k*).

By the proposals of the Phoenix Company, it is stipulated that "persons insured shall give notice of the loss forthwith, deliver in an account, and procure a certificate of the minister, churchwardens, and some reputable householders of the parish, importing that they knew the character, &c. of the assured, and believe that he really sustained the loss and without fraud." After several arguments it was at last determined, that the procuring of this certificate was a condition precedent to the payment of any loss, and that the fact of its being wrongfully refused is no sufficient excuse for the want of it. The parties to the contract are bound to abide by the terms and conditions of it, according to their true intent and meaning; and those conditions will not be satisfied by the performance of acts apparently equivalent, for the insured cannot substitute any other terms in lieu of those agreed to by the policy (*l*).

But where one of the conditions in a policy of insurance against fire, stated that if any difference should arise on any claim, it should immediately be submitted to arbitration, and after directing how the arbitrators should be chosen, added, that no compensation should be payable until after an award determining the amount thereof should be duly made: it was held, that the insured might maintain an action on such policy, notwithstanding the condition, where it appeared that the insurers derived the general right of the assured to recover anything, and did not merely question the amount of damage (*m*).

We have before alluded to the proviso in the con-

(*i*) See *Worsley v. Wood* (in error), 6 T. R. 710; 2 Hy. Bl. 574.

(*k*) *Routledge v. Burrell*, 1 Hy. Bl. 254.

(*l*) *Worsley v. Wood* (in error), 6 T. R. 710; and see *Oldman v. Bewicke*, 2 Hy. Bl. 577, n.

(*m*) *Goldstone v. Osborne*, 2 C. & P. 550. Best.

Notice of
loss.

Submission
to arbitra-
tion.

Remedy
where loss is
occasioned
by riot.

ditions of certain insurance companies, protecting them against any demand from the insured in case of loss through "*civil commotion*," or "*usurped power*" (n). In such cases, although the insured may be unable to recover for the loss against the company, he is not left without remedy, as he may proceed against the Hundred under the statute, and recover full satisfaction for the injury he has sustained (o). If the company are compelled to indemnify the insured for the consequences of public violence or tumult, they, on their part, can recover from the Hundred the amount of the damage by bringing an action in the name of the insured (p).

(n) See *ante*, p. 359.

(o) Marsh. 794.

(p) *Mason v. Sainsbury*, 2 Marsh. 794.

CHAPTER VI.

OF COVENANTS TO INSURE.

It is customary in leases of houses, factories, and other buildings, to insert a covenant on the part of the lessee "to insure and keep insured the demised premises during the term," to a given amount of money. And where the words of the covenant were, "to insure and keep insured" a given sum of money upon the premises during the term in some sufficient insurance-office, the covenant was held not to be void for uncertainty; as it meant only that the premises should be insured against fire in some office where insurances against fire are usually effected (*a*).

Where, in compliance with such a covenant, the tenant effected an annual policy on the premises with an insurance company in the usual printed form, by which it is declared that the policy shall be for such longer period as the assured shall regularly pay, and the company receive the premium; and a space of fifteen days beyond the quarter days is given for payment of the premium, during which time the company is liable; the year expired on the 25th March, 1811, but the tenant did not pay the premium for a renewal till the 25th April following, and the company then gave a receipt for the premium, stating the insurance to be from Lady-day 1811, to Lady-day 1812; the court held that the covenant was broken by reason of the non-payment of the premium on or before the 9th April, and that the lease was forfeited on a clause of re-entry (*b*).

But where a lessee covenanted to insure, and keep insured, a specified sum of money upon the

Usual covenant to insure.

What is a breach.

Doe d. Pitt v. Shewin.

What not a breach.

(*a*) *Doe d. Pitt v. Shewin*, 3 Camp. 134. Ellenborough.

(*b*) *Doe d. Pitt v. Shewin*, 3 Camp. 135.

Doe d. Pitt
v. Laming.

premises, and accordingly effected such an insurance for a definite time; and the policy contained a memorandum that, in case of the death of the insured, the policy might be continued to his personal representative, provided that an indorsement to that effect were made upon it within three months after his death; and the lessee having died, the indorsement continuing the policy to his personal representative, was not made till *after the expiration* of three months from the time of his decease. The court held, that under these circumstances there was no breach of the covenant to keep the premises insured (c).

Extent of
tenant's lia-
bility not
limited to
amount of
policy.

If a tenant covenant to keep the premises in repair, and also to insure them for a specific sum against fire; on their being burned down his liability on the former covenant is not limited to the amount of the sum to be insured under the latter (d).

Exception in
leases of da-
mage by fire.

In many cases an exception of accidents by fire or tempest is introduced into leases for the protection of lessees, but this exception should be inserted into the covenant for the payment of the rent, as well as into the covenant for repairs, in order to exempt the lessee from the obligation of paying the rent, as well as rebuilding, in case the house should be destroyed by fire or tempest (e).

Whether co-
venant to in-
sure runs
with the land

Whether a covenant to insure be generally a covenant which runs with the land, is a question still undecided. Supposing the lease to contain a covenant that the lessee shall insure, *and in case of fire pay over the insurance-money to the lessor*, there seems little doubt but such a covenant, giving a double security to the lessor for the rebuilding of the house, must be taken as falling within the definition of a covenant running with the land. But upon the bare covenant to insure, the law presents

(c) *Doe d. Pitt v. Laming*, 4 Camp. 73. Lord Ellenborough expressed a doubt in this case as to the validity of such a proviso.

(d) *Digby v. Atkinson*, 4 Camp. 275.

(e) See *Monk v. Cooper*, Strange, 763, S. C. 2 Lord Raym. 1477; and *Hare v. Groves*, 3 Anstr. 687.

to the landlord no means of recovering from the tenant the money he may receive from the insurance-office, whatever equity might do between the parties.

Whether the covenant to insure runs with the land or not, the lessor may, on non-performance of it, enter as for breach of *condition*, and oust the assignee of the lessee, even although the lessor has distrained for rent, with knowledge of the breach of covenant, which was a waiver of the breach of condition up to the time of distress. But the subsequent non-insurance was a continuing breach after the time of the distress, and gave a right of entry for the forfeiture (*f*), and a court of equity will not relieve a tenant against whom the landlord is proceeding to recover the demised premises for breach of the covenant to insure (*g*). On breach of covenant lessor may enter.
Equity will not relieve.

But if the lessor by his own conduct induces the lessee to think he is doing all which is required of him by the lease, retaining the lease in his own hands, and furnishing an imperfect abstract of it, he will not be entitled to recover for breach of the covenant (*h*). Exception.

In an action of ejectment brought for not insuring according to covenant, it lies upon the plaintiff to prove that no insurance has been effected; and the circumstance that the defendant refused to show the policy when the plaintiff required him, and the non-production of it at the trial, after notice, are not *prima facie* evidence against him (*i*). In ejectment proof of breach is on plaintiff.

A tenant has no equity to compel his landlord to spend money received from an insurance-office, on the demised premises being burnt down, in rebuilding the premises; nor to restrain the landlord from suing for the rent until the premises are rebuilt (*k*). Landlord not compellable to rebuild in law or equity.

(*f*) *Doe d. Flower v. Peck*, 1 B. & Ad. 428.

(*g*) *Green v. Bridges*, 4 Sim. 96; *Thompson v. Guyon*, 5 Sim. 65.

(*h*) *Doe d. Knight v. Rowe*, Ry. & Moo. 343. And see also *Doe d. Pitman v. Sutton*, 9 C. & P. 706. Denman.

(*i*) *Doe d. Bridger v. Whitehead*, 3 Nev. & P. 557; 8 Ad. & E. 571; 1 W. W. & H. 521; 2 Jurist, 493.

(*k*) *Leeds v. Cheetham*, 1 Sim. 146.

Nor will a court of equity grant an injunction to restrain the landlord from bringing an action of ejectment for breach of the covenant to insure (*l*).

(*l*) *Reynolds v. Pill*, 19 Vesey, jun. 134.

CHAPTER VII.

ARSON.

THE offence of arson is a felony at common law, and is defined by Lord Coke to be the malicious and voluntary burning the house of another, by night or by day (*a*). Upon an indictment for this offence, the prosecutor must prove the burning; that the house was the house of another; and that the offence was committed voluntarily and maliciously. At common law.

The several offences of burning houses and other property are now, however, provided against by various statutes recently passed. By statute.

By the 7 Wm. IV. and 1 Vict. c. 89, repealing the 7 & 8 Geo. IV. c. 30, it is enacted (s. 2,) "that whoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony; and being convicted thereof, shall suffer death." This sentence may be recorded under a provision in a former Act of Parliament (*b*).

By the second section of the act above cited it is enacted, that "whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland; or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or Buildings.

(*a*) 3 Inst. 66; 1 Hale P. C. 566.

(*b*) 4 Geo. IV. c. 48, s. 1.

defraud any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

Proof requisite to support indictment.

Upon an indictment framed under this statute, the prosecutor must prove (in addition to the firing of the property, and that the property set fire to comes within the meaning of the statute and the description given in the indictment) the intent to injure or defraud the party mentioned in the indictment. Upon this subject the law was luminously expounded by Lord Chief Justice Tindal, in his charge to the Grand Jury, at Bristol: "Where," he says, "the statute directs, that to complete the offence, it must have been done with intent to injure or defraud some person, there is no occasion that either malice or ill-will should subsist against the person whose property is so destroyed. It is a malicious act in contemplation of law, when a man wilfully does that which is illegal, and its necessary consequence must injure his neighbour; and it is unnecessary to observe that the setting fire to another's house, whether the owner be a stranger to the prisoner, or a person against whom he had a former grudge, must be equally injurious to him: nor will it be necessary to prove that the house, which forms the subject of the indictment in any particular case, was that which was actually set on fire by the prisoner. It will be sufficient to constitute the offence, if he is shown to have feloniously set on fire another house, from which the flames communicated to the rest. No man can shelter himself from punishment on the ground that the mischief he committed was wider in its consequences than he originally intended" (c).

Malice.

Thus, where a man was indicted for setting fire to a mill with intent to injure the occupier thereof, and it appeared from the prosecutor's evidence that the

prisoner was an inoffensive man, and never had any quarrel with the occupier, and that there was no known motive for committing the act, and he was convicted; the judges held the conviction right, for that a party who does an act wilfully, necessarily intends that which must be the consequence of his act (*d*).

Where the intent laid is to defraud insurers, the insurance must be proved. For this purpose the policy must be produced, the books of an insurance company not being admissible evidence until the absence of the policy is satisfactorily accounted for (*e*). The policy must be properly stamped (*f*).

By the 7 Will. IV. and 1 Vict. c. 89, s. 10, “who-^{Stacks, crops, &c.}soever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.”

By the 7 & 8 Geo. IV. c. 30, s. 17, it is made felony to set fire to any crops, whether standing or cut down, and is punishable with transportation for seven years, or imprisonment not exceeding two years, with whipping once, twice, or thrice, at the discretion of the court (*g*).

Other Acts of Parliament have been passed to punish the offence of setting fire to ships of war and merchant vessels; but these provisions do not fall within the scope of this treatise.

It may be right, however, to allude to the penalty ^{Penalty on negligent firing of property.}

(*d*) *Farrington's Case*, Russ. and Ry. C. C. 207; *Philp's Case*, 1 Moo. C. C. 273.

(*e*) *Doran's Case*, 1 Esp. 127.

(*f*) *Gieson's Case*, Russ. & Ry. C. C. 138; 2 Leach 1007; 1 Taun. 95.

(*g*) For further information on this subject, see Ros. Cr. Ev. 2nd edn. pp. 244-257.

which has been attached to the negligent burning of houses, and other property. By statutes 6 Anne, c. 31, and 14 Geo. III. c. 78, s. 84, "if any menial or other servant, through negligence or carelessness, shall fire, or cause to be fired, any dwelling-house or out-house, or houses or other buildings, and be convicted thereof, by oath of one witness before two justices, he shall forfeit 100*l.* to the churchwardens, to be distributed amongst the sufferers by such fire; and if he should not pay the same immediately on demand of the churchwardens, he shall be committed by the justices to some workhouse, or common gaol, or house of correction, for eighteen months, there to be kept to hard labour." If this enactment was more frequently enforced, it might, possibly, have the effect which the legislature contemplated in framing it,—that of inducing greater caution on the part of domestic servants, through whose gross and criminal neglect and indiscretion the large majority of conflagrations are occasioned. Insurance companies, especially, might find it their interest to prosecute to conviction in certain flagrant instances, by way of example to those whose vigilance can only be stimulated by the perils of fine and imprisonment.

CHAPTER VIII.

LIST OF FIRE INSURANCE COMPANIES IN ENGLAND,
WALES, SCOTLAND, AND IRELAND.

ENGLAND AND WALES.

TOWN.	
Alliance	Bristol Union
Atlas	District Birmingham
British	Essex Economic
Church of England	Essex and Suffolk
County	Hants, Sussex, and Dorset
English and Scotch	Kent
Farmers'	Leeds and Yorkshire
Globe	Leicestershire
Guardian	Liverpool
Hand-in-Hand	Manchester
Imperial	Newcastle-upon-Tyne
Licensed Victuallers'	Norwich Equitable
London	Norwich Union
Phoenix	Nottingham and Derbyshire
Protestant Dissenters'	Salop
Royal Exchange	Sheffield
Sun	Shropshire and North Wales
Union	Suffolk Amicable
Westminster	West of England
	Winchester, Hants, and South of England
	Yorkshire
COUNTRY.	
Birmingham	

SCOTLAND.

Aberdeen Assurance Com- pany	Insurance Company of Scot- land
Caledonian Insurance Com- pany	National Insurance Company
County and City of Perth In- surance Company	North British Insurance Com- pany
Forfarshire and Perthshire Insurance Company	North of Scotland Assurance Company
Friendly Insurance Company	Scottish Union Insurance Company
Hercules Insurance Company	

IRELAND.

Aberdeen	Manchester
Alliance	National
Atlas	North British
British and Irish	North of Scotland
County	Norwich Union
Church of England	Patriotic
English and Scottish Law	Phoenix
Farmers' and General	Royal Exchange
Globe	Scotland
Imperial	Scottish Union
Liverpool	Sun
London Corporation	West of England
London Union	

ACTIONS ON BUILDERS' BILLS.

ACTIONS ON BUILDERS' BILLS.

Two main causes unite to produce frequent disputes relative to builders' bills. Of these, the chief is to be found in that continual struggle of competition, which, pervading every trade, causes the employer to beat down the builder below a fair price,—whilst on the other hand it induces the contractor to keep in the back-ground many items which must eventually come forward. The other is the natural consequence of those accidents and chances attendant upon all building transactions, which makes the slightest deviation from the original plan, the source of many heavy,—and we must add frequently groundless—charges by the contractor, under the head of “extras.”

Chief causes
of disputes
between
employers
and con-
tractors.

A third, but comparatively insignificant source of contention is to be found in the Architect's specification. To any person who will consider for one moment the multitude of provisions to be made in the erection even of an ordinary dwelling-house,—the intricacy of their nature, and the almost trifling minutiae of their arrangement,—it cannot for a moment appear extraordinary that some few items should escape his notice. Indeed the wonder would seem rather to be that so many are carefully remembered, than that a few should be forgotten.

From which soever of these causes disputes between the contractor and his employer originate, their nature is almost invariably the same,—they are points of construction not matters of fact. In other words, the question at issue is not one of workmanship, nor of

price, but whether the subject of extra claim forms a part of the contract or not.

All specifications have a schedule of conditions annexed, which after alluding to the completion of the works, payment of the money, &c., usually contain a clause to the following effect: "and also, that if the description of anything necessary to complete the said works according to the design expressed in the drawings, or in the foregoing specification, or to be understood by fair inference therefrom, be omitted in the said specification or drawings, the contractor shall take no advantage of such omission or omissions, but shall supply whatever may be needed to complete the whole without any additional charge."

It is evident to the dispassionate reader of such a condition as this, that it is intended to supply any trifling omissions on the part of the architect; such omissions being actually necessary to complete work directly specified to be performed; but, as we have already stated—it is on this point that the disputes turn, and with reference to their several readings of this clause the contending parties usually join issue.

Much however of this old-fashioned disputation has been avoided by the modern method of practice adopted in the contracting for any public or private building of more than ordinary dimensions, or in the erection of which such questions are likely to arise. In such cases two surveyors are appointed, one on behalf of the architect, the other on behalf of the builder; and these surveyors conjointly form a bill of quantities of work to be done. The work having been executed, the same surveyors—having previously named a referee in case of questions arising as to quantities or price—proceed to measure the extra work not provided in the contract; and according to their report, or that of the referee in case of a difference between them, the builder's bill is settled.

It may be said that this course of proceeding does not shut out the great source of contention; viz.,

the construction of the conditions ; at the same time it must be obvious that it so contracts its limits as to leave but little room for litigation, where parties are really anxious to avoid it.

It must be also borne in mind that builders' bills are more usually made matters of reference than of law, and this will account for the paucity of recorded cases on the subject. On perusal of the New Building Act, (7 & 8 Vict. c. 84) given in the first part of this work, it will be seen that all questions relative to the building of party-walls are submitted to the final jurisdiction of the official referees appointed by the Act. The judges, too, have almost uniformly adopted the practice of submitting such subjects to a reference, even when brought into court—and in this they have exercised a wise discretion, since the technicalities and intricacies of building are utterly unintelligible to the most erudite of juries.

With these few preliminary observations we proceed to the consideration of our subject :

Where there has been no special contract entered into between the parties, an action of *indebitatus assumpsit*, or of debt for work done and materials found, will lie at the suit of the contractor to recover the value of the works he has executed, on an implied contract by the defendant to pay for them. In such case the plaintiff will have to prove that the work was done at the request of the defendant, and to give satisfactory evidence as to the value.

Where there is no special contract.

But it is an ancient and undoubted rule of law, that where persons have made an express contract none can be implied (a). The terms of the agreement prescribe the duties and liabilities of the respective parties, and their remedy must be sought on the instrument wherein they have thought fit to embody the nature and terms of the stipulation. Hence, so long as a special contract exists, the work not being complete, no action of *indebitatus assumpsit* on an implied contract can be maintained,

Action must be on the contract, when there is one.

(a) *Per* Lord Kenyon in *Cutter v. Powell*, 6 T. R. 324.

even although the plaintiff seek to recover for extras, and the defendant has admitted one item to be an extra (*b*). The case is different where an oral order is given for other work during the continuance of the first employment (*c*). Where deviations from the original contract have been made, by consent, in the course of the work, it still remains binding so far as it can be traced; and the plaintiff may recover on a *quantum meruit* for the additional work (*d*).

Unless the works are completed.

But where works, executed under a special contract, have been quite completed, and accepted by the defendant, the plaintiff will be allowed to recover in an action of *indebitatus assumpsit*; if the agreement were not under seal, and was for payment in money; for where the conditions of an agreement have been performed, a duty is raised for which a general count will lie (*e*).

Contract need not be in writing.

A contract to build, alter, or repair a house, &c., and to provide materials for the purpose, need not be in writing, unless it is not to be performed within a year. For it is not in law a contract for the sale of goods, even as regards the materials; but an entire contract for *work and materials* (*f*).

Production of agreement, duly stamped, necessary on trial.

Where however the terms of the contract have been reduced to writing, the writing must be produced, duly stamped, on the trial of the cause. And this, although the action be not brought on the agreement itself, or to recover for work done in pursuance of it, but for extras, or work done beyond, and independently of the contract. In such a case the plaintiff was nonsuited, on its appearing upon the cross-examination of his witnesses that the written instrument, which was in court, was un-

(*b*) *Vincent v. Cole*, M. & M. 257.

(*c*) *Reid v. Bates*, M. & M. 413.

(*d*) *Robson v. Godfrey*, 1 Stark. C. 275; *Pepper v. Burland*, Peake's C. 103; *Burn v. Miller*, 4 Taun. 745.

(*e*) *Gordon v. Martin*, Fitz. 302; B. N. P. 139.

(*f*) Chitty on Contracts, 566; 3d edn.

stamped ; the court holding it to be material in such an action to put in evidence the original written agreement, both for the purpose of ascertaining the rate at which the work was to be paid for, and establishing the fact that the items sought to be recovered as extras were not included in the contract (*g*).

So, where it appeared on the trial of an action for work and labour, that the work was done during the progress of, but separate from some other work which the plaintiff was doing under a written contract, and which had been paid for ; the court held, that the written contract ought nevertheless to be produced (*h*).

Though the work was not done under it.

So strict is the rule requiring the production of the agreement, that where it is necessary to the plaintiff's case that the agreement should be produced, and it turns out that it cannot be read in evidence for want of a stamp, he will be precluded from recovering the value of the work and labour to which the agreement refers, although the defendant has had the benefit of it (*i*). So, where the plaintiff had been employed by, and performed certain work for the defendant, under a written agreement, and subsequently claimed for work done but not included in it ; it was held, that in order to dispense with the production of such agreement, he must prove an employment by the defendant, altogether distinct and separate ; and it is not sufficient to show that such employment came within the description of extra work (*k*).

The party with whom the contract was originally made is, usually, the person to sue upon it ; except in certain cases where the employer has consented that a third person should do the work, the contract

Who may sue.

(*g*) *Vincent v. Cole*, 1 M. & M. 257 ; 3 C. & P. 481. See also *Fielder v. Ray*, 6 Bing. 336 ; and *Jones v. Howell*, 4 Dowl. 176.

(*h*) *Holbard v. Stevens*, 5 Jur. 71.

(*i*) *Hughes v. Budd*, 8 Dowl. 478.

(*k*) *Parton v. Cole*, 6 Jur. 370.

having been previously assigned to him by the original undertaker (*l*).

Common
courts, *quantum meruit*.

No action can be maintained on a *quantum meruit*, so long as the special agreement under which the work was done remains open; but for extras it may (*m*).

Before the new rules H. T. 4. W. IV. prohibiting two counts on the same transaction, it was decided that, "If a man declare upon a special agreement, and likewise upon a *quantum meruit*, and at the trial prove a special agreement, but different from what is laid, he cannot recover on either count; not on the first, because of the variance,—nor on the second, because there was a special agreement; but if he prove a special agreement, and the work done, but not pursuant to such agreement, he shall recover upon the *quantum meruit*; for otherwise he would not be able to recover at all" (*n*). But this must be understood of cases where the defendant, notwithstanding the defect of performance, has not rescinded the contract *in toto*; for performance is a condition precedent to the claim for payment.

Therefore, where a builder undertakes a work of specified dimensions and with specified materials, and deviates from the specification, he cannot recover upon a *quantum valebat* for the work, labour, and materials (*o*).

Nor should the plaintiff, in opening, his case, rely entirely on a *quantum meruit*, when there is a special contract existing to which he may find it necessary to resort. Therefore where a plaintiff declared in assumpsit for work and labour, proved the value of the work done, and relied wholly on the *quantum meruit* count; and the defendant proved that the plaintiff agreed to do the work for a certain sum;

(*l*) *Oldfield v. Lowe*, Hil. T., 9 & 10. Geo. IV., cited *Peake's Add. C.* 12, note; and 9 B. & C. 73 S. C.

(*m*) *Rees v. Lines*, 8 C. & P. 126.

(*n*) Bul. N. P. 2nd ed. 139; cited by Sir Jas. Mansfield in *Cooke v. Munstone*, 1 N. R. 355.

(*o*) *Ellis v. Hamlyn*, 3 Taun. 52.

on the plaintiff's counsel proposing to show that she was to be paid that sum if the work did not exceed a specified quantity, but that if it did, she was to be paid accordingly, the court stopped him, saying that the plaintiff should have relied on the contract in the first instance, and that it should have been stated by her counsel in opening the case to the jury (*p*).

Where an entire contract has been entered into for work and labour, and for materials to be supplied, and the work has been completed under it, the plaintiff may recover the whole on the several general counts, (for work and labour and materials found) which are applicable to the several parts of the contract; but where the contract is to build a house, he cannot recover for the materials supplied, on a count for goods sold and delivered; although, by reason of a deviation from the original plan, the contract has been superseded as to price (*q*). Nor can the value of materials be recovered under a count for work and labour only (*r*). Work, labour, and materials.

This common count for work and labour cannot be supported where the labour was bestowed upon the materials of the plaintiff, in making a chattel which never became the defendant's property; for until the completion and acceptance of the article, the plaintiff might have appropriated the produce of his labour and materials to any other person, and could, therefore, have no right of action against the defendant. But if the labour have been bestowed on the defendant's materials, and at his request, the plaintiff may maintain an action to recover the value thereof; for he could not appropriate the produce of his own labour on your materials to any other person (*s*). So, if the work is to be done under the superintendence of a person appointed by the defendant, and to be paid for by instalments, the pro-

(*p*) *Soulby v. Pickford*, 2 M. & P. 545.

(*q*) *Cottrell v. Apsey*, 6 Taun. 322.

(*r*) *Heath v. Freeland*, 1 M. & W. 543; 2 Gale, 140; 5 Dowl. 166.

(*s*) *Atkinson v. Bell*, 8 B. & C. 277; 2 M. & R. 292.

perty in the produce of the labour and materials passes to the defendant, on their being put to the fabric, with the approval of his appointee ; or, at all events, as soon as the first instalment is paid (*t*).

Right to recover.

Work contracted for must be completed.

Where there has been a specific contract to do certain work for a specified sum, the work agreed upon must be done before any action will lie to recover for any portion of it ; unless the plaintiff have been prevented or excused from completing the contract by the defendant ; or the latter has accepted the incomplete portion, or the work has become illegal or impossible.

Therefore, upon an entire contract to repair a damaged chandelier, and make it complete for £10, an action will not lie for work done and materials provided, in effecting a partial repair, although such repair was beneficial to the defendant, and consisted partly in a supply of fresh materials, which the plaintiff had not demanded back (*u*).

Where the first count of a declaration was on a special agreement, for the plaintiff to build a house for the defendant at an agreed price, and it stated that the plaintiff had bestowed work on the house, and that the defendant abandoned the contract, and hindered the plaintiff from completing it ; and the second count was for goods sold ; and the defendant pleaded *non assumpsit*, and that he did not abandon the contract, nor hinder the plaintiff from completing the house ; the particulars of demand being for work and materials under the agreement : the court held, that if the defendant had not hindered the plaintiff from completing the contract, the latter could only recover for extras not included in it ; and that the defendant having said that he would never pay a farthing, was no proof that he had abandoned the contract, because he was not then liable

(*t*) *Woods v. Russell*, 5 B. & Ald. 946 ; *Clarke v. Spence*, 4 A. & E. 448 ; *Laidler v. Burlinson*, 2 M. & W. 602 ; and see *Chitty on Cont.* 379-383 ; 3rd edn.

(*u*) *Sinclair v. Bowles*, 4 M. & R. 1 ; 9 B. & C. 92. See also *Parmeter v. Burrell*, 3 C. & P. 144.

to pay anything, the work not having been completed(*x*).

If, however, there be not an *express* contract to Exception. complete the work before any remuneration shall be due,—as in the case of a shipwright undertaking, according to the custom of that class of workmen, to put a ship in repair,—the workman may, after he has done some of the work, refuse to continue it unless he is paid for the part already performed, and may recover to that extent (*y*).

Nor will the refusal of a workman to deliver work which he has performed, except on payment of a large and exorbitant sum of money, preclude him from suing for and recovering a reasonable price(*z*).

Neither will the destruction of work by accidental fire, or otherwise, before it is finished or delivered, Work destroyed before finished. deprive the workman of his right to remuneration for what he had already done(*a*); unless there be an express and uniform custom in the trade that no payment is to be made unless the work be completed and delivered (*b*). To guard against casualties during the progress of extensive works, it is usual (and always important) to make the contractor insure until the contract is complete.

“Notwithstanding the universality of the position that performance, when it is the consideration for the payment of the stipulated price, is a condition precedent, yet the conduct of the employer in adopting the contract, when, if he disputed the performance, he had it in his power to rescind it *in toto*, by placing the parties in *statu quo*, affords, as against him, a conclusive presumption that the work has been properly executed, or, at all events, excludes the party acquiescing from taking the objection.” Hence it is the duty of the person for whom

(*x*) *Rees v. Lines*, 8 C. & P. 126, Coleridge.

(*y*) *Roberts v. Havelock*, 3 B. & Ad. 404.

(*z*) *Hughes v. Lenny*, 5 M. & W. 183.

(*a*) *Menetone v. Athawse*, 3 Burr. 1592.

(*b*) *Gillett v. Mawman*, 1 Taun. 137; and see *Adlard v. Booth*, 7 C. & P. 108.

work has been done under a contract, if dissatisfied with the character and quality of it, to put an end to the contract at once, by declining the article, or otherwise; and thus placing the parties in the same situation as before the contract was entered into. But in the case of building contracts this is, almost always, impossible. If a wall or a house has been built on the defendant's premises it is impracticable for him, however defective the work, to rescind the contract *in toto*. In such cases, although the defendant has partially availed himself of the plaintiff's labour, and the materials supplied by him, yet in consequence of the imperfection of the work, the plaintiff can only recover on a *quantum meruit* for the labour, and a *quantum valebant* for the materials, to the amount of the benefit actually derived (c).

Breach of the contract waived by defendant.

So, where the agreement has not been strictly complied with, but the defendant has waived the breach, the plaintiff may recover the value of his labour and materials. Therefore, where the plaintiff contracted to build some cottages by the 10th of October, but they were not finished until the 15th, and the defendant after that day accepted them; the plaintiff was held entitled to recover the value of his work on a count for work and labour; the failure being on a point which did not go to the whole consideration, and the defendant having had the benefit of the work (d).

Subsequent implied promise.

Again, where a lessor contracted to pay his tenant at a valuation for certain erections pursuant to a plan to be agreed on, provided they were completed in two months, and, after the condition was broken, the lessor encouraged the lessee to proceed with the work; the latter was permitted to recover as for work and labour, on an implied promise arising out of so many of the facts as were applicable to the new agreement (e).

(c) Stark. Ev. p. 1308, 3rd. edn.

(d) *Lucas v. Godwin*, 3 Bing. N. C. 737; 4 Sc. 502, S. C.

(e) *Burn v. Miller*, 4 Taun. 745.

In building contracts it is not unusual to insert a provision that nothing shall be paid either during the progress of the works, or at their completion, unless the certificate of approval of the surveyor or architect be first obtained. In such cases, the obtaining of this certificate is a condition precedent to the right to recover and cannot be dispensed with. Therefore, where the plaintiff contracted with the defendants to excavate, break and cart, a certain quantity of ballast, to be afterwards screened to the satisfaction of the defendants' engineer, for a certain price; and on the trial of an action to recover for work done under this contract, there was no evidence that the screening was to the satisfaction of the defendants' engineer; on which the judge told the jury that, if the ballast was not screened to the engineer's satisfaction, they should find for the defendants, and the jury, nevertheless, found for the plaintiff, the court afterwards granted a new trial(f).

Therefore where in a building contract, it was provided that the contract should not be vacated by any additions or alterations, but that the price to be paid for such alterations should be settled by a surveyor, who was to be sole arbitrator in settling such price, and all disputes arising in or about the premises: and the defendant (the employer) agreed to pay certain proportions of the contract price upon receiving a certificate in writing, signed by the surveyor, testifying that certain portions of the building had been done, and his approval thereof, and the balance that should be found due, after deducting the previous payments, within two months after receiving the surveyor's certificate, that the whole of the works had been completed to his satisfaction; it was held, that the surveyor's certificate was a condition precedent to the plaintiff's right to sue upon the contract in respect of alterations, nor did the builder's charges checked by the surveyor, and by him forwarded to the defendant, amount to such certificate so as to give the plaintiff a right of action, although

Condition
precedent to
right to sue.

the defendant had not objected to pay on the ground that no sufficient certificate had been rendered (*g*).

But where the plaintiff became tenant to the defendant of certain premises at the yearly rent of £250, and by the agreement it was stipulated that the tenant should make certain alterations, and do certain repairs within the first year, to an amount not less than £200, such repairs, &c., "to be inspected and approved of" by the landlord, and "to be done in a substantial manner." And it was agreed that the tenant should be allowed the sum of £200 towards such repairs, &c., and should be at liberty to retain the same out of the first year's rent of the premises; it was held, that the landlord's approval was not a condition precedent to the tenant's right to retain the £200, and that if it were, it was performed, he having done the repairs (to the satisfaction of the jury) in a "substantial manner" (*h*).

But objection must be properly taken, at the trial.

The objection, nevertheless, must be taken by the defendant at the proper time and in the proper manner; for the court will not afterwards interfere to give him the benefit of it, by granting a new trial, or entering a nonsuit. Hence, where in an action brought on an agreement to pay money for work to be done, on the production of the certificate of a third person that he approved the work, (the declaration also having the common counts) the plaintiff produced on the trial a bill of charges for work done, which had been submitted to such third person (who, it was proved, had attended the progress of the work) under which he had written and signed the following memorandum: "On examining the annexed bill, and considering the circumstances of the case referred to me, I am of opinion that a reduction should be made of £12 11s. 6d.;" but that person being afterwards called as a witness for the defendant, stated, that he never had approved the work,

(*g*) *Morgan v. Birnie*, 3 M. & Sc. 76; 9 Bing. 672. See also *Worsley v. Wood*, 6 T. R. 710; and *Bradley v. Milnes*, 1 Bing. N. C. 644; 1 Scott, 626, 697.

(*h*) *Dallman v. King*, 5 Scott, 382; 4 Bing. N. C. 105, S. C.

but disapproved it, and would not have signed a certificate of approval; and the jury, on the whole case, found for the plaintiff: the court afterwards refused to grant the application for a new trial, on the ground that the action could not be maintained without proof of such certificate; saying, that the defendant should have asked at the trial of the cause for leave to move to enter a nonsuit (*k*).

The general principles on which a contractor, per-^{Extras.} forming work under a special agreement, and for a fixed price, shall be allowed to recover the value of any additional work which may be ordered during the progress of the undertaking have been laid down in a recent case by Lord Tenterden, C. J. (*l*). The action was brought to recover the amount of a carpenter's bill, for alterations in the house of the defendant. The work having been originally undertaken on a contract for a fixed sum, alterations were subsequently made on which the plaintiff claimed to abandon the contract, and recover a measuring value price for the work actually done. The original contract was for £62 10s.; there was some entirely new work done under a separate contract for £10; and there were considerable alterations and departures from the original plan, which, by the usual evidence, it was shown that the defendant had seen and had not objected to, and, in some cases that he had expressly approved of them. Among these were the alteration and enlargement of a window, which were proved to have occasioned an increased expence of £5. The defendant had paid £82 in all. The plaintiff's witnesses stated the value of the whole work to be £140; the defendant's witnesses estimated it below the sum actually paid. The Chief Justice, in summing up to the jury, observed that the case, although very common in its circumstances, involved a very important principle, and required their very serious consideration. "In this

(*k*) *De Vile v. Arnold*, 10 Price, 21.

(*l*) *Lovelock v. King*, 1 M. & Rob. 60.

case, as in most others of the kind, the work was originally undertaken on a contract for a fixed sum. A person intending to make alterations of this nature generally consults the person whom he intends to employ, and ascertains from him the expense of the undertaking; and it will very frequently depend on this estimate whether he proceeds or not. It is therefore a great hardship upon him, if he is to lose the protection of this estimate, unless he fully understands that such consequences will follow, and assents to them. In many cases he will be completely ignorant whether the particular alterations suggested will produce any increase of labour and expenditure; and I do not think that the mere fact of assenting to them ought to deprive him of the protection of his contract. Sometimes, indeed, the nature of the alterations will be such that he cannot fail to be aware that they must increase the expense, and cannot therefore suppose that they are to be done for the contract price. But where the departures from the original scheme are not of that character, I think the jury would do wisely in considering that a party does not abandon the security of his contract by consenting that such alterations shall be made, unless he is also informed at the time of the consent, that the effect of the alteration will be to increase the expense of the work. In the present case, it is not pretended that any such caution was given; and it does not appear to me that any of the alterations, except that of the window (the additional costs of which the money paid is enough to cover) were of such a nature as necessarily to import an increase of expense. The question, however, is entirely for the jury; and it is of great importance, from the frequency of such cases, that they should adopt a correct principle in its decision."—The verdict was found for the defendant.

A still more obvious inference from the principles above laid down is drawn in the following case:—A person contracted to make an article of certain materials for a certain stipulated price; but he used

materials of a better quality than those agreed upon, and thereupon claimed a larger sum than was stipulated, or required to have the article returned to him : the court held, that he was precluded by the terms of his agreement from demanding more than the contract price ; nor could he be permitted to claim a return of the article on the purchaser objecting to pay a larger amount (*m*).

Where work is done under a special contract, and for estimated prices, and there is a deviation from the original plan by the consent of the parties, the estimate is not excluded, but forms the rule of payment so far as the special contract can be traced ; and for any excess beyond it, the party is entitled to his *quantum meruit* (*n*). But if a man *contract* to work by a certain plan, and for a fixed sum, and that plan be so entirely abandoned that it is impossible to trace the contract, and say to which part of the work it can be applied ; in that case the workman will be permitted to charge for the whole work done by measuring value, as if no such contract had been made (*o*).

It is customary to insert a clause in the contract ; providing that any deviations or alterations shall not vitiate nor render the contract void, but that the value of such variations shall be estimated by a person appointed by the parties (usually the architect or surveyor), and the amount thereof either added to or deducted from the amount of the contract as the case may be. But this provision will not justify such a flagrant departure from the specification, as would entirely and altogether vary the nature of the work (*p*).

Where there has been no specific agreement or stipulated price, and the plaintiff sues upon a *quantum meruit*, to recover the value of work done, the

Value :
where no
specific
contract.

(*m*) *Wilmot v. Smith*, 3 C. & P. 453. Tenterden.

(*n*) *Robson v. Godfrey*, Holt, 236 ; 1 Stark 275. Gibbs.

(*o*) *Pepper v. Burland*, Peake's R. 103 ; Lord Kenyon.

(*p*) *Rex v. Peto*, 1 Y. & J. 37.

amount of the remuneration is a question for the jury to decide. If any custom exists as to the amount, it will be presumed that the parties contracted with a reference to it, and the usual charges will be used as a guide in estimating the damages (*q*).

And where the plaintiff declares on a *quantum meruit* for work and labour done, and materials found, the defendant may reduce the damages by showing that the work was improperly done, and may entitle himself to a verdict by showing that it was wholly inadequate to answer the purpose for which it was intended (*r*).

Where a tradesman finishes work differently from the specification agreed on, he is not entitled to the actual value of the work, but only to the agreed price, minus such a sum as it would take to complete it according to the specification (*s*).

So, where a party contracted to supply and erect a warm-air apparatus for a certain sum; it was held, in an action for the price (the defence to which was, that the apparatus did not answer), that, if the jury thought it was substantial in the main, though not quite so complete as it might be under the contract, and could be made good at a reasonable rate, the proper course would be to find a verdict for the plaintiff, deducting such a sum from the amount of the claim as would enable the defendant to do what was requisite (*t*).

Where a price had been agreed on.

Although a certain price has been agreed for, yet it is incumbent on the plaintiff to show that his work was properly done according to the contract, if that be disputed, in order to prove that he is entitled to his reward; otherwise he has not performed that which he undertook and the consideration fails, even, as it seems, although no notice has been given

(*q*) Stark. Ev. 1307, note (a), 3rd edn.

(*r*) *Farnsworth v. Garrard*, 1 Camp. 38. Ellenborough.

(*s*) *Thornton v. Place*, 1 M. & Rob. 218. Parke.

(*t*) *Cutler v. Close*, 5 C. & P. 337. Tindal.

that his performance of the contract is to be disputed (*u*).

“*In strictness*, wherever there has been a special Defence.
contract, the terms of which have not been complied General
with, the plaintiff can have no right to recover at issue.
all, not having done that which he undertook; if Where con-
he contracts to build a dwelling-house, he has no tract has not
right to recover for building a stable. But still, if been strictly
the defendant be benefited to a certain extent, and complied
does not repudiate the contract *in toto*, it seems to with.
be a rule of policy and convenience, as well as of
equity and justice, that the plaintiff should be
allowed to recover to the extent of the benefit de-
rived by the defendant, and no further. It would be
hard upon the plaintiff to preclude him from reco-
vering at all, because he had failed in part of his
entire undertaking; it would be equally so upon the
defendant to compel him to pay the whole sum when
he had received but a partial benefit, and to oblige
him to seek his remedy by a cross action” (*x*).

The words of Mr. Justice Le Blanc, in giving Plaintiff to
judgment in the case of *Basten v. Butter*, above prove the
cited, are also to the same effect. He says; “in value of his
either case (*i. e.* whether a specific sum be or be not work when
stipulated for) the plaintiff must be prepared to show it is disputed.
that his work was properly done; if a man contracted
with another to build him a house for a certain sum,
it surely would not be sufficient for the plaintiff to
show that he had put together such a quantity of
bricks and timber in the shape of a house, if it could
be shown that it fell down the next day; but he
ought to be prepared to show that he had done the
stipulated work according to his contract; and it is
open to the defendant to prove that it was executed
in such a manner as to be of no value at all to
him” (*y*).

(*u*) *Basten v. Butter*, 7 East, 479. See Judgments of
Lawrence and *Le Blanc*, Justices.

(*x*) Stark. Ev. p. 1209, 3rd edn.

(*y*) 7 East, 484.

The plaintiff, therefore, must come into court prepared to prove that he has faithfully fulfilled his contract, as well in respect of the quality of the materials and workmanship, as in the elevation, dimensions, and character of the fabric.

Notice to plaintiff that the value of work is to be disputed; when necessary.

If the work has been done under contract and for a stipulated price, and the defendant means to dispute the goodness or value of the work or materials, it is usual and proper to give notice of his intention to the plaintiff; though not, perhaps, absolutely necessary. "Where, however, the plaintiff declares on a *quantum meruit*, and there has been no stipulation as to price, such notice is clearly unnecessary; the defence can be no surprise upon him, since he must come prepared to show the value of the work done. Where a particular price has been agreed for, the plaintiff may have greater reason to complain of surprise, if evidence of this kind be insisted on; for otherwise he may not be prepared to prove more than the agreement and the work done, and therefore such notice should be given" (z).

Insufficiency of work may be shown under the general issue

The insufficient and improper execution of the work is, therefore, an available defence in an action to recover the stipulated price; and it only remains to add, that such a defence may be given under the general issue. In *Cousins v. Paddon* (a) the declaration was on a special contract, for work to be done at a fixed price, consisting of the common counts in debt on simple contract for work and labour, to which the defendant pleaded that he never was indebted; and it was held, that he was not precluded by the new rules of pleading, H. T. 4 W. IV. Nos. 1 and 2, from setting up as a defence under that plea, that the work was done in an improper manner.

Or that the work was done under a contract not fulfilled.

We have already seen that where a specific contract has not been performed, a plaintiff cannot re-

(z) Stark. Ev. p. 1210, 3rd edn.

(a) 5 Tyr. 535; 2 C. M. & R. 547; 4 Dowl. 488; 1 Gale, 305, and see *Baillie v. Kell*, 4 Bing. N. C. 638.

cover on it on a general *indebitatus* count ; therefore a defendant, under the plea of *non-assumpsit* or *nunquam indebitatus*, may show that the work was done under a specific contract, and that the contract was not performed. But where the plaintiff is entitled to recover *quantum meruit*, the above pleas of the general issue to such a count put in issue only the quantum of the value ; and if no value has been given, the plaintiff is not entitled even to a nominal sum (*b*).

In an action on a special contract for work done under the contract, and for work, labour, and materials generally, the defendant may give in evidence under the general issue, that the work has been done improperly, and not agreeably to the contract ; and the plaintiff in that case will only be entitled to recover the real value of the work done and the materials supplied (*c*). Or done im-
properly.

The defendant may also entitle himself to a verdict by showing that the work has been so improperly and insufficiently performed as to be totally inadequate to the purpose for which it was intended : hence, having derived no benefit, he cannot be called upon for any remuneration (*d*).

Where the plaintiff had contracted to find the labour and materials for completing some specified work, and he neglected to procure certain portions of the materials, which the defendant therefore supplied, and paid for ; it was held, that unless the plaintiff had assented to the deduction of the price from his demand, the defendant should plead the money so paid as a set-off, and not rely only on the general issue (*e*). Set-off.

But where a plaintiff sues on a *quantum meruit* for work and labour, the defendant may, without

(*b*) *Cousins v. Paddon*, *supra*.

(*c*) *Chapel v. Hickes*, 2 C. & M. 214 ; 4 Tyr. 43.

(*d*) *Farnsworth v. Garrard*, 1 Camp. 38 ; see also *supra*, p. 396 ; *Allen v. Cameron*, 1 C. & M. 832.

(*e*) *Allinson v. Davies*, Peake's Addl. Ca. 82.

pleading a set-off, give in evidence that he provided the plaintiff's men, who did the work, with beer; as it may be that the plaintiff deserves to be paid the less because his men had their beer provided for them by the defendant (*f*).

Although the bad quality and insufficiency of the work be a good ground for reducing the amount of the demand, even where a specific sum has been agreed upon; yet if a bill of exchange has been accepted for the work, no such evidence can be given to reduce the amount of the claim upon it; but the defendant may have a cross-action to recover damages for the breach of the contract (*g*).

Penalty for delay.

May be deducted from amount due on contract.

Or from cost of extras.

In building contracts it is usual to insert a clause providing that the work shall be completed on or before a given day; and that for every day, or week, or month, during which the work shall remain unfinished after the lapse of the specified period, the contractor shall be liable to a penalty which shall, in that case, be deducted from the amount due on the contract. If, however, the whole claim under the agreement had been satisfied before the penalty was incurred, the employer may still deduct the amount of the penalty from the cost of extra work which the contractor has executed, and which remains unpaid. Therefore, when by articles of agreement for altering and repairing a warehouse for a fixed price, it was stipulated that in the event of the work not being completed in three months, the builder should forfeit and pay to the person with whom he contracted to do the work, £5 weekly, and every week; such penalty to be deducted from the amount which might remain due on the completion of the work; it was held, in an action brought for extra work, that the employer was entitled, after having paid the contract price, to set off the penalty against the extra work; and that he had

(*f*) *Grainger v. Raybould*, 9 C. & P. 229. Patteson.

(*g*) *Farnsworth v. Garrard*, 1 Camp. 40, note. *Tye v. Gwynne*, 2, *id.* 346; *Moggridge v. Jones*, 3, *id.* 38; 14 East, 486, *S. C.*

a double remedy, either to deduct it or recover it (*h*).

Where, however, the plaintiffs on the 19th of April, 1836, entered into a written contract to build, for the sum of £1,700, a brewery for the defendants, so far as regarded the carpenters' work, within the space of four months and a half next ensuing the date of the agreement; and in default of completing the same within the time thereinbefore limited, to forfeit to the defendants £40 per week for each week, that the completion of the work should be delayed beyond the 31st of August, the amount to be deducted from the said sum of £1,700 as liquidated damages; and the plaintiffs did not begin the work for four weeks after the date of the agreement, in consequence of the defendants not being able to give them possession; and they were afterwards delayed one week by the default of their own workmen, and four weeks by the default of the masons, &c., employed by the defendants; and the work was not completed until five weeks after the time limited: it was held, that the defendants were not entitled to deduct from the £1,700 any sum in respect of the delay, either for the one or the four weeks (*i*).

A party who undertakes to perform work, and has materials given to him for that purpose, by his employer, is liable to an action of tort, if he pawns any part of those materials (*k*). Action of tort
against con-
tractor;
when it lies.

In an action on a tradesman's bill, where the work has been done by several persons under him, any of the workmen called may be asked as to the particular sums which they received (*l*). Evidence.

It is doubtful whether, in an action for work and labour, the party who actually did the work is a

(*h*) *Duckworth v. Alison*, 1 M. & W. 412; 1 Tyr. & Gr. 742; 2 Gale, 11.

(*i*) *Holme & Anor. v. Guppy & Anor.* 3 M. & W. 387.

(*k*) *Smith v. White*, 8 Dowl. 255; 6 Bing. N. C. 218; 8 Scott, 483.

(*l*) *Fricker v. French*, 5 Esp. 79, Ellenborough.

competent witness to prove that he, and not the plaintiff, is the person to be paid (*m*).

But where the defendant having contracted to rebuild a house, employed the plaintiff to do the bricklayer's work ; the owner of the house, who had paid neither of them, is a competent witness to prove that the plaintiff did the work, as the interest of the witness was equal either way, and it was immaterial to him whether he paid the one or the other (*n*).

6 & 7 Vict. c.
85.

In consequence of a recent Act of Parliament, however, questions as to the competency of witnesses now rarely occur. The 6 & 7 Vict. c. 85, provides, that no person thereafter offered as a witness shall be excluded by reason of incapacity from crime or interest, but shall be admitted to give evidence touching the matter in question, notwithstanding he may be interested in the result of the trial. Such interest, greater or less, does not now, therefore, affect the competency of the witness, but only the credit due to his testimony ; and it is matter of observation for the consideration of the judge and the jury how far the witness is biassed in his evidence by his interest in the result of the cause.

In an action of assumpsit for refusing to allow the plaintiff to proceed with certain work according to agreement, the defendant pleaded that the work was to be done to the satisfaction of *A. B.*, and that part of the work which was done was not to his satisfaction, and therefore he discharged the plaintiff. It was held, that upon this issue it was not necessary for the defendant to call *A. B.* (*o*).

In an action for work and labour, it is presumptive evidence for the defendant that he was in the habit of paying other workmen employed by him in the same line of business, regularly, and at stated times, and that the plaintiff had been at such times with the other workmen (*p*).

(*m*) *Martin v. Jackson*, 1 C. & P. 17. Park.

(*n*) *Goodman v. Lowe*, 1 C. & P. 76. Gifford.

(*o*) *Vickers v. Cocks*, 3 Dowl. 492.

(*p*) *Lucas v. Novosiliski*, 1 Esp. 296. Eyre.

A plaintiff is at liberty, at the close of the defendant's case, to give evidence in reply in order to negative some specific fact sworn to by the defendant's witnesses, the proof of which he could not be expected to have anticipated; but he cannot be allowed to adduce evidence which he might have given in the first instance. Evidence in reply.

Therefore, where in an action for the amount of a builder's bill, to which the defence was, that the charges were too high, and surveyors were called for the defendant to prove that in the year 1831 they surveyed the work, and that in their judgment the charges were £100 too much; it was held, that a letter from the defendant's attorney, stating that the work had been surveyed in 1829, and that the charges were considered to be £60 too much, was not admissible as evidence in reply (*q*).

(*q*) *Knaps v. Haskell*, 4 C. & P. 591. Tenterden. And see Stark. Ev. vol 1, p. 423, note (e), 3rd edit.

A

GLOSSARY OF TECHNICAL TERMS,

PECULIAR TO BUILDING.

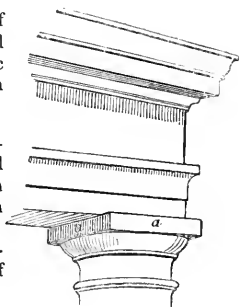
GLOSSARY.



ABACUS.—The uppermost member of the capital of a column, *a*; and an essential item in the classic orders. The architrave rests on the Abacus.—*See* COLUMN.

ABUTMENT, or BUTMENT.—In masonry, or brickwork, that solid part of a pier or wall from which an arch springs, or against which it abuts.—*See* ARCH.

In carpentry, the term signifies the point of junction of two pieces of timber.



ACHELOR.—*See* ASHLAR.

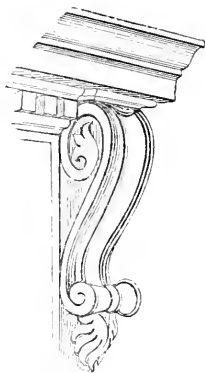
ACUMINATED.—Terminating in a point. An expression generally applied to any spire or pinnacle finished plain, without any ornament at the top.

AIR-BRICK.—A small iron boxed grating—in size and form similar to a brick—inserted in walls, for the purpose of admitting a free ventilation under the floors.

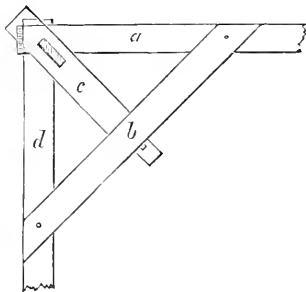
ALCOVE.—Properly, a recess;—but in England the term is frequently used to denote a summer-house, or covered seat in a garden, &c.

ALTO-RELIEVO.—Sculptured work, standing very fully out from the back-ground, but not wholly (although it may be partially) detached from it.—*See* BASSO-RELIEVO.

ANCONES.—Ornaments supporting the cornices of Ionic doorways, or windows; and called also consoles, or trusses.



ANGLE BRACE, OR ANGLE-TIE.—A timber introduced across the angles of roof-plates, in order to tie them together, and into which the dragon-piece, [a timber used for the reception of the hip-rafter] is framed.—*See* DRAGON-PIECE. Thus *a*, are the wall-plates; *b*, the angle-brace; *c*, the dragon-piece.



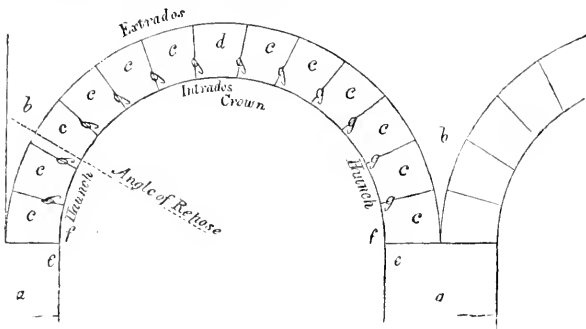
ANGLE OF REPOSE.—In masonry, that angle (generally of about 32 degrees) in an arch, at which the bricks first begin to slip, or round off towards its crown; and therefore varying in its situation according to the peculiar character of the arch.—*See* ARCH.

ANGLE-TIE.—In carpentry, a tie of wood or iron fastening the angles of roof-plates together.—*See* ANGLE-BRACE.

ANTÆ.—A species of pilasters or flat columns, used in the Greek and Roman Orders to terminate the faces of side-walls, when they project beyond the end walls. In modern architecture they occur most frequently in the building of porches and porticoes.—*See* PILASTER.

ARCH.—A form of construction by which the weight over any

opening is thrown upon lateral abutments. The component parts of an arch are as follows:—

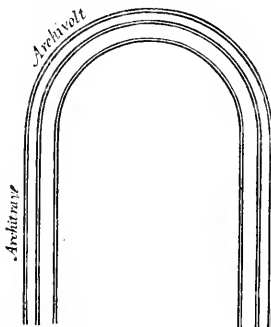


The PIERS, *a*; SPANDRILS, *b*; VOUSSOIRS, *e*; and KEYSTONE, *d*. Its accessory details consist of,—the ABUTMENT, *e*; SPRINGING, *f*; SOMMERING LINES, *g*; ANGLE OF REPOSE; HAUNCHES; CROWN; EXTRADOS; and INTRADOS. The width between the piers is called THE SPAN.

ARCH-BUTTRESS, or FLYING-BUTTRESS.—A buttress, standing out from the wall, which it supports by means of an arch. This buttress is chiefly used in Ecclesiastical architecture.

ARCHITRAVE.—The lowest member of an entablature, [see COLUMN,] resting immediately upon the abacus.—See ABACUS.

Also, the ornamental mouldings running along the square openings of doors or windows.

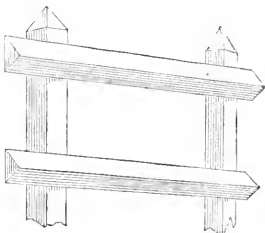


ARCHIVOLT.—The mouldings running round the curved face of

an arched opening.—*See* ARCHITRAVE. This term occurs most frequently in allusion to Gothic architecture.

ARRIS.—Any angle which, not having been rounded off, retains its original sharpness.

ARRIS RAILS.—Rails cut so as to present a projecting angle and two oblique surfaces to the eye.



ASHLAR, or ASHLER.—Masonry worked fair, and set in regular courses. When houses are built of brick and faced with stone, the word ashlar is generally used to designate such facing.

ASHLERING, or ASHLINING.—The lining of the lower sides of a room formed in a span-roof, and frequently brought forward into such room, away from the walls, in the manner of a partition.

ASHLINING.—*See* ASHLERING.

ASTRAGAL.—A moulding rounded on the face like an ankle-bone, whence (Astragalus) it derives its name. This moulding is very frequently used in compound; as in the case of

ASTRAGAL AND HOLLOW.—A moulding which is best explained by the accompanying illustration; in which *a* is the astragal, and *b* the hollow.



ATLANTES.—Male figures used instead of columns, to support entablatures, &c. This name is peculiar to Greek architecture; by the Romans they were called Telamones. Caryatides are female figures of the same description, and adapted to the same purpose.

BACK.—In Carpentry, the upper edge of a rafter.—*See* ROOF. In Ironmongery that portion of a stove which rests against the wall at the back of the fire-place. In Joinery, the centre portion of a window recess;—the sides being termed elbows.

BACKING, or BRACKETTING.—Slips of wood fixed against rough walls, to facilitate the attaching of the wooden finishings.

BACK-FILLETING.—*See* GROUNDS.

BACKFLAPS.—Those parts of interior window-shutters, which fold back into the side boxings [*see* BOXINGS], so as to retire out of sight.

BACKFOLDS.—*See* BACKFLAPS.

BACK-PUTTYING.—In glazing, the finishing of the puttying on the contrary side to that on which the glass is put in.

BACK-SLAB, or BACK-HEARTH.—*See* SLAB.

BALK, or BAULK.—A square piece of timber, before it is sawn up for use.

This term is also sometimes used to designate the horizontal beams (whether tie-beams or collars) in an open roof.

BALL, or BALL-FLOWER.—An ornament usually inserted at intervals in a hollow moulding.

BALUSTER, *vulgo* BANISTER.—A small pillar, used either in balustrades for ornament, in lieu of close parapets;—or to support the hand-rail by the sides of stairs.—*See* STAIRCASE.

BAND.—A thin square projection, intended for ornament. The term is also frequently applied to any continuous line of ornament in low relief, running round a building.

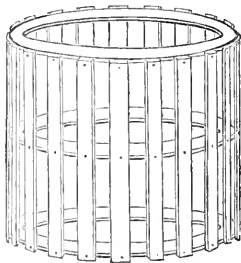
BANDELETTE.—A small band.

BARGE-BOARD, PARGE-BOARD, BERGE-BOARD, or VERGE-BOARD.—A board, more or less ornamental, affixed to the gable of a roof so as to hide the ends of the horizontal timbers, and protect them from the weather.

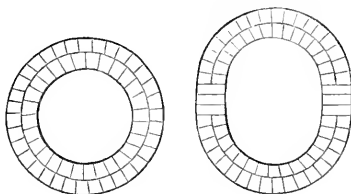
BARREL-CURB, or WELL-CURB.—

In well-sinking, an open cylinder of horizontal circular ribs, (usually of elm) set round with upright spars of deal, about four feet in length; designed to keep the well perpendicular and cylindrically true during the progress of sinking.

As the well increases in depth the barrel-curb descends, the sides being made good with brickwork above, until the required depth having been attained, the open spaces between the ribs of the barrel-curb are filled in with brickwork, and it remains to form the foundation of the well.



BARREL DRAIN.—A drain which is circular in its section.



BASE.—The lowest part of a pillar or wall. In a column, that part between the shaft, and the ground on which the shaft stands.—*See* COLUMN.

BASEMENT.—The lowest story or floor of any building. Although this term is commonly applied only to that portion of a house which is wholly or partly under ground,—in an architectural sense it implies that lowest story or compartment of any design, which, whether it be above or below the ground-line, serves as a base for the superstructure or main feature of the composition.

BASEMOULDINGS.—Those mouldings which rest immediately upon any plinth.

BASSO-RELIEVO.—Sculptured work projecting less than half its full proportion from the back-ground, or plain surface. When the projection is one-half, it is called **MEZZO-RELIEVO**; when more than one-half, **ALTO-RELIEVO**.

BAT.—In bricklaying, any portion of a broken brick.

BATTING, unde BATTED.—The fixing of iron railing or standards into stone steps, curb, &c., by running melted lead around them into mortises, or holes cut in the stone for their reception.

BATTENING.—Strips of wood fixed vertically to the bond timbers in walls, at regular intervals, for the purpose of receiving either the laths for plastering, or the canvas for papering, as the case may be.

BATTENS.—Deal cuttings used for battening,—usually about 1 inch in thickness, and from 2 to 3 inches wide, and placed at intervals of about 12 inches. Battens form the foundation (according to circumstances) for laths and plaster, canvas and paper, and the slating on roofs.

This term is also applied generally to fir stuff, sawn of such dimensions as may be adapted to the purposes above mentioned.

BATTER, unde BATTERING.—A wall is said to “batter” when it slopes inwards from the base: to “overhang,” when it slopes outwards.

BAY.—A term which assumes several meanings, according to its context. In a groined roof, ceiling, or arch, it denotes any one of the spaces contained between the principal divisions. In the framing of a roof, it designates the space between two trusses.—*See* ROOF. In a wall, it alludes to any division comprised between two buttresses. In a window composed of several compartments or “lights,” it means any one of those “lights” (also called “days”). The word **BAY** is also frequently used synonymously with the word **Compartment**, to signify any division or part of a whole.

BAY-WINDOW or Bow-WINDOW, also called COMPASS-WINDOW.—A projecting window on the ground story. An **ORIEL WINDOW** is a projecting window on an upper, (usually the first) floor. All projecting windows are colloquially termed “bow-windows;” but a bow-window, strictly speaking, must be semicircular, or at least curvilinear, in form: whilst a bay-window may be polygonal in form, but must be straight-sided.

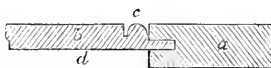
BEAD.—A rounded moulding, similar in form to, but smaller than the astragal.

BEADED.—Worked with a bead moulding. The term is also used in allusion to any thing fixed in its place by means of a beading. Thus, a window is said to be “beaded in,” when the small rounded moulding which confines it to its place is fastened up.

BEAD-AND-BATTEN.—A compound term in carpentry, used to denote a rough style of work, composed of mere batten-stuff [*see* **BATTEN**] edged with a bead.

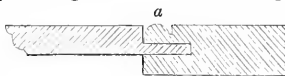
BEAD-BUTT.—A compound term in joinery, applied to shutters, doors, &c., framed with flush panels, and having a bead on the vertical sides of the panels only.

BEAD-BUTT AND SQUARE.—A compound term in joinery, applied to bead-butt work, when the panels are even



with the framing on one side only: the other presenting a *square* sinking. In the accompanying illustration, *a*, is the style or uprights of the framing; *b*, the panel; *c*, the bead on the front edge of the panel; and *d*, the square back of the panel.

BEAD-FLUSH.—A compound term in joinery, applied to framing, in contradistinction to the preceding. The difference being, that in this case the bead, *a*, is worked *on the framing*, so as to surround the panels; whilst, in the other, it was worked *on the panels*, and only in the direction of the grain.



BEAM.—A general name applied in carpentry to the several parts of a frame-work, according to their particular use.—For the details of these *see* the appropriate headings, as **TIE-BEAM**, **COLLAR-BEAM**, &c.

BEARERS.—Pieces of timberstuff which support the gutter-boarding behind a parapet, or between two roofs.

BED, BEDDING, BEDDED.—A stone or brick is said to be “bedded” in the mortar or cement in which it is laid. When it is pressed down solid, and the face of the bed or joint finished off neatly with the trowel, it is said to be “pointed.”

BEDMOULD.—That portion of a cornice which is below the corona.

BELL-TRAP.—A trap in the form of a bell, usually from 3 to 6 inches in diameter, fixed over the inlets to drains, so as to prevent the escape of the effluvia. It is also called a **STENCH-TRAP**.



BELT.—A synonyme for **STRING-COURSE**.—*See* **STRING-COURSE**.

BELVEDERE.—A story built out above the roof, (most appropriate to Italian architecture) for the purpose of obtaining a view of the surrounding country.

BEVEL, a slope ; *unde* **BEVELLED**, sloped off.

BEVELLED GROUNDS.—*See* **GROUNDS**.

BILECTION, or BOLECTION Moulding.—A projecting moulding on framing ; such as is seen round the panels of the best sort of entrance-doors, &c.

BILGET.—A wooden Brick.—*See* **WOOD-BRICK**.

BINDER, or BINDING JOIST.—*See* JOIST.

BIRD'S-MOUTH.—In carpentry, a triangular notch cut in either end of sloping timbers, to enable them to fit properly into the square timbers from which they rise, or against which they abut.

In bricklaying, the term implies a similar notch cut in a brick, to adapt it to any upright, or irregular angle.

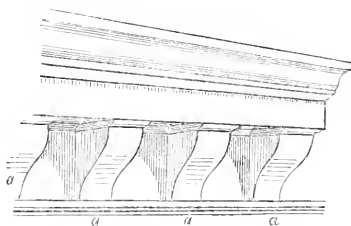
BLINDING.—In paving ; the filling up of interstices.

BLOCKS, unde BLOCKED.—In joinery, small pieces of wood fixed behind skirting, to keep it away from the wall.

Generally speaking, any small pieces of wood fixed out of sight for the purpose of strengthening the work, are termed blocks.

BLOCKING-COURSE.—A plain course of stone, surmounting a main cornice.

BLOCK-CORNICE, or BLOCKED-CORNICE.—A cornice having supporting blocks, as *a, a, a*.



BOND.—Long timbers built into walls, for the purpose of equalizing their inclination to settle.

BONDERS, BOND-STONES, BINDING-STONES, THROUGH-STONES, or PERPENT-STONES.—In masonry, stones running through the work, so as to hold it firmly together.

BONDED.—*See* ENGLISH BOND.

BORDER SLATES, or VERGE SLATES.—Those slates which lie next to the brickwork.

BOW-WINDOW.—*See* BAY-WINDOW.

BOXINGS, unde BOXED.—In joinery, a term applied to the recesses for receiving sliding shutters.

BOWTELLS, or BOTTELS.—The shafts of a clustered column or pillar.

BRACE.—A piece of timber placed diagonally in a framed partition, to increase its strength.—*See* PARTITION.

BRACKETTING.—*See* BACKING.

BRAD, *unde* BRADDED.—A nail without a head.

BREAKING-JOINT.—Bricks, tiles, &c. laid in such a manner that the joints of one line come into the middle of another, are said to be laid “with a breaking-joint.”

BREAST-TREE.—A horizontal rail.

BRESSUMMER, BRESTSUMMER, or BREASTSUMMER.—A beam of wood or iron laid over any large opening in a wall, to support the superincumbent weight. Thus for, example, the beam over a shop front is called “the bressummer.”

BRICK-DRESSINGS, *unde* BRICK-DRESSED.—Masonry is said to have brick-dressings, when bricks are laid at all the angles.

BRICK-NOGGING.—Bricks laid flat or edgeways between the quartering (or timbers) of framed partitions.

BRICK-TRIMMER.—A brick arch, built to support any hearth, stove, &c.

BRIDGING-JOISTS.—*See* JOISTS.

BROACH.—*See* SPIT.

BROACHING, *unde* BROACHED.—In masonry, picking or rough dressing with a pointed hammer or chisel.

BUILT-IN-THE-HEART.—A phrase applied to walls, as signifying “well filled up in the centre work.”

BULL’S-EYE.—A circular opening.

BUTMENT.—*See* ABUTMENT.

BUTTS.—A common description of hinges, fixed on the edge of doors, shutters, &c., and frequently termed “edge-hinges.”



BUTT.—A term frequently applied to mouldings in compound.—*See* BEAD and BUTT, &c.

BUTTRESS.—A projection built against the face of a wall, in order to give it additional strength.

BYRE.—A provincial term (northern) for “Cowhouse.”

CABERS.—The laths on which thatching is laid.

CAMBER-BEAM.—A beam terminating the upper part of any truss.
See ROOF.

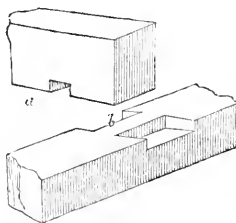
CANTALEVERS, CANTILEVERS, or CANTELEVERS.—Supports projecting at right angles from a wall, and usually employed to carry a balcony, &c.

CANTED.—Bevelled.—*See* BEVEL.

CAPITAL.—The head of a column.—*See* COLUMN.

CAPPING, unde CAPPED. *See* COPING.

CAULKING.—In carpentry, the fastening down one timber into another by means of a notch, *a*, fitting on to a caulking, *b*.



CEILING-JOIST.—*See* JOIST.

CEMENT FILLETING.—A narrow band of cement placed in lieu of lead-flashing [*see* FLASHING] at the exterior points of junction of plates with the wall, &c., so as to protect those points from the weather.

CENTRE-POINT.—A term in ironmongery, applied to gate or other hinges working either way.

CENTERING.—The temporary timber framing upon which an arch is built.

CHAIN-PLATE.—Long timbers let into a wall, to receive the ends of the floor-joists.

CHAMPERED, or CHAMFERED.—Canted.—*See* CANTED.

CHANNEL, unde CHANNELLING.—A groove, or furrow, worked on the face of masonry.

CHASE, or CHASING, unde CHASED.—A sinking or cutting in masonry or brickwork, for the reception of other work.

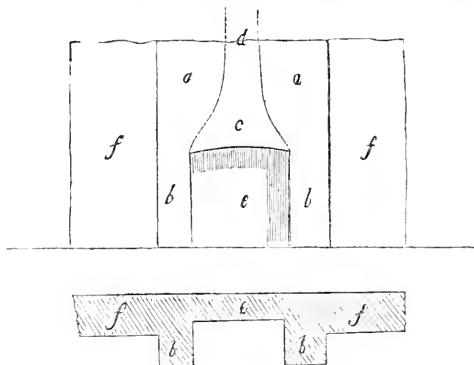
CHECKED, or CHACKED.—Fitted with a notch; the term “checked down on” signifies “fitted into with notches,”—as in caulking.—*See* CAULKING.

CHIMED.—Let into.

CHIMNEY-BAR.—An iron bar which supports the

CHIMNEY-BREAST, or front side of the flue. The several com-

ponent parts of a chimney are as follows :—*a*, the breast ; *b*, the jambs ; *c*, the neck ; *d*, the flue ; *e*, the back ; *f*, the wall.



CHIMNEY-SHAFT.—That portion of a chimney which appears above the roof.

CILL.—*See* SILL.

CLAMPED.—A term applied to a table-top, or any similar piece of joiner's work having narrow pieces crossing the grain, so as to give strength and prevent warping ; such pieces being fixed by the method usually called "groove and tongue"—*See* GROOVE and TONGUE.

CLAMP-BURNED.—A term applied to bricks burned in an inferior kiln, and not regularly set up.

CLEADED.—In carpentry—clothed, or covered in.

CLUSTERED COLUMN.—A column composed of several shafts clustered together.

COB.—A mixture of unburned clay and straw ; sometimes used for building cottage walls, &c.

COFFER-WORK.—In masonry, a term applied to walls built by the erection of two faces connected together at intervals by bond-stones, and having the space between them filled-in with rubble, concrete, or rough stones cemented together.

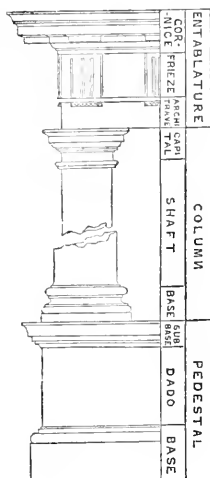
COGGED.—Notched.

COINS, or QUOINS.—The corners or angles of a building.

COLLARBEAM.—*See* ROOF.

COLONNADE.—A covered walk, having an open range of columns on one or both sides.

COLUMN.—The principal part of an architectural order or arrangement, principally divided into **PEDESTAL**, **COLUMN**, and **ENTABLATURE**; which are again subdivided as follows:—The **PEDESTAL** into **PLINTH**, **DADO**, and **SURBASE**: the **COLUMN** into **BASE**, **SHAFT**, and **CAPITAL**:—and the **ENTABLATURE** into **ARCHITRAVE**, **FRIEZE**, and **CORNICE**. Each of these several parts is composed of various mouldings, plain or enriched,—deriving their names from their respective forms or situation.



COMPASS ROOF.—More commonly called a **SPAN ROOF**: a roof spanning or extending from one main wall to the other, and sloping both ways—this term is more especially used in contradistinction to a **LEAN-TO ROOF**, which slopes one way only, and rests principally on *one* wall; and to a **PAVILION ROOF**, which slopes all four ways.

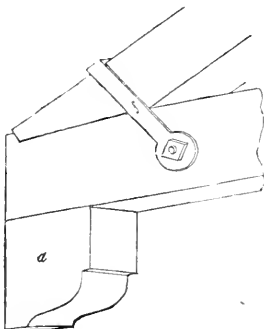
CONCRETE.—A compound of large gravel, sharp sand and lime; used to form an artificial foundation, where the ground is too defective to receive a building.

CONSOLE.—See **ANCONE**.

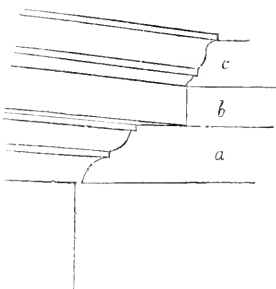
COPING, or CAPPING.—The covering of a wall. The term **CAPPING** is sometimes used for Coping, but it more properly belongs to joinery, in which trade it signifies the top covering or coping of low partitions, &c.

CORBEL.—A projection of stone or timber, thrown out from the face of a wall, as at *a*, for the purpose either of giving additional stability to some beam; or of supporting some superincumbent weight.

CORBEL-COINS.—Projecting corner-stones, placed at the feet of a gable, for the purpose of receiving the ends of the eaves-gutters.



CORNICE.—A moulded projection forming the crowning or finishing member of an architectural order. The principal component parts of a cornice are the bed-mould, *a*, the corona, *b*, and the cymatium, *c*.



CORING, unde CORED. — See PARGETTING.

CORONA.—See CORNICE.

CORRUGATED.—Waving, wrinkled, or fluted.

COUNTRESS-SLATING.—See SLATES.

COUPLES, or COUPLING, alias CUPPLES, or CUPPLING, principal rafters.—See ROOF.

COURSE.—A single range or line of bricks or stones, in brickwork, or masonry.

CRADLING.—The timberwork which sustains the lath and plaster of vaulted ceilings—or the entablature of a shop front, &c.

CRAMPS.—Copper or iron clasps, employed to tie masonry together.

CRIPPLED.—Imperfect. A wall is said to be crippled when it is out of the upright—a cornice, when the lines do not carry straight all through.

CROOK.—An iron hook.

CROSS-BRACE.—See ROOF.

CROSS-TIE STONES.—A synonyme for BOND-STONES.—See BOND-STONE.

CROWN-GLASS.—A term applied to colourless window-glass—to distinguish it from green, blue, or other coloured glass.

CROWN.—The vertex or highest point in the opening of an arch.—See ARCH.

CUNIFORM.—shaped like a wedge.

CUPPLES.—See COUPLES.

CURB.—In masonry, a continuous line of rectangular stone blocks.

CURBED.—A roof is said to be “curbed” when the walls are not carried up on all sides to the full height of the ceiling.

CURRENTED.—Laid on a slope sufficient to carry off water.

DADO.—A component part of the pedestal of a column.—*See* COLUMN. Also, that part of the wall of a room which lies between the chair-rail and the skirting.

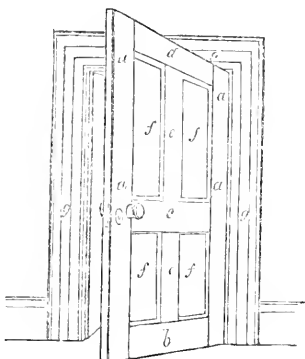
DAY.—*See* BAY.

DEALKEYS, or STRUTTING PIECES.—Pieces of stout deal board, driven in on a line with each other, between joists; in order to stiffen the floor.

DENTELS, or DENTILS.—Small square blocks in the Cedmould of Ionic Cornices.

DISCHARGING ARCH.—A semicircular arch formed in the body of a wall, so as to relieve the part immediately below from the weight above. This arch is most generally used over flat openings.

DOOR.—The component parts of a door and its dressings are as follows: *a*, STYLES; *b*, BOTTOM-RAIL; *c*, LOCK-RAIL; *d*, TOP-RAIL; *e*, MIDDLE-STYLES; *f*, PANELS; *g*, ARCHITRAVE.



DOOR SOLE.—A provincial term for a door-sill or Threshold.

DORMER-WINDOW.—A window projecting forwards from the sloping side of a roof.

DOT.—In plumber's work, a stud or broad-headed tack.

DOME.—A term used to signify a form of covering-arch, in contradistinction to the vault; a vault being continuous, whilst a dome is isolated, and independent, and generally of a circular form.

DOWEL.—A wooden plug driven into the joints of masonry or brickwork, so as to form a hold for the wooden finishings.

DRAUGHTED, or DROVED.—In masonry, worked smooth round the joints with a chisel. This term is generally used in compound, as DRAUGHTED and BROACHED, or DRAUGHTED and SCABBLED—signifying stone work picked rough on the face, (BROACHED, or SCABBLED), and worked even at the joints (DRAUGHTED).

DRESSED.—In masonry, worked fair with a hammer or chisel.

DRIP.—*See* HOOD MOULDING.

DUTCH BARN.—A building framed with posts and a roof, but left open on all sides.

EAVES.—That portion of a roof which overhangs the walls.

ELBOWS.—In carpentry, iron straps formed thus \angle , also called **KNEES**, and used for the purpose of securing partitions, &c. to the ground by screws. In joinery.—*See* BACK.

ELBOW BUCKETS.—In a waterwheel, bucket-boards framed at an angle, instead of straight, as is more usual.

ENGLISH-BOND.—A term applied to brickwork to designate that mode of brick-laying which consists of alternate courses [*see* COURSE] of headers and stretchers, (bricks placed lengthways with the wall are called stretchers, those laid across the wall, headers,) and used in contradistinction to Flemish-bond, which consists of headers and stretchers, laid alternately in the same course.

ENTABLATURE.—That primary part of an architectural order which rests upon the column.—*See* COLUMN. An entablature properly consists of three divisions—*viz.* The **ARCHITRAVE**, which rests immediately upon the abacus [*see* ABACUS] of the column;—the **FRIEZE**, or central space;—and the **CORNICE**, or compound of projecting mouldings.—*See* CORNICE.

ENTRESOL, or MEZZANINE STORY.—A small story intervening between the ground and first floors of a building.

EXTRADOS.—The exterior curve of an arch.—*See* ARCH.

FALL (of land).—A term used in land measuring, to signify 36 square yards.

FACIA or FASCIA.—A fillet or band, of a height disproportioned to its projection.

FEATHEREDGED.—Worked thin at one edge.

FERROL.—In plumber's work, a brass tube introduced at the junction of a lead service-pipe with the main water-pipe.

FILLET.—A small flat face or band dividing the various mouldings of a cornice, &c.

FILLETING of CEMENT.—*See* CEMENT FILLETING.

FINIAL.—The carved ornament crowning any spire or pinnacle.

FIR-KEYS.—A synonyme for deal-keys.—*See* DEALKEYS.

FIR UP, or FUR.—A carpenter is said to **FUR UP** a timber when, by means of affixing small slips of wood or **FURRINGS**, he brings it to any required level or slope.

FIRRINGS, or FURRINGS.—Small slips of wood thicker at one end than at the other, fixed under gutter and other boards, to give them any required fall or current, or to bring them to any level.

FLANCHED UP.—Sloped, so as to throw off the wet.

FLANCHES, or FLANGES.—Projections on the edges of cast iron beams, &c. intended to give them a broad bearing on the brick-work or masonry below.

FLANK-TREE.—A valley rafter.—*See* ROOF.

FLASHING.—*See* LEAD-FLASHING.

FLAT-RULED, also called **FLAT-JOINT** and **JOINTED.**—A term applied to joints in brickwork, when, after having been struck flat with a trowel, they have a line drawn along the centre with an iron jointer, and a **FLAT-RULE** or **STRAIGHT EDGE**, giving them a neat and finished appearance.

FLEMISH-BOND.—*See* ENGLISH-BOND.

FLOATS in a waterwheel.—Those boards in the circumference of the wheel, upon which the water acts.

FLOATED.—*See* RENDER and **FLOAT.**

FLOOR.—The component parts of a flooring—are the **JOISTS** which carry the flooring boards. The **PLATES** are those timbers upon which the ends of the joists rest: and these **PLATES** themselves in some cases rest on a projecting ledge of the wall, and in others are built into the wall; in which latter case, if long and continuous, they are called **CHAIN-PLATES.**

FLUSHED UP.—Filled up solid, as the top of a wall with mortar, &c.

FLYING BUTTRESS.—*See* ARCH BUTTRESS.

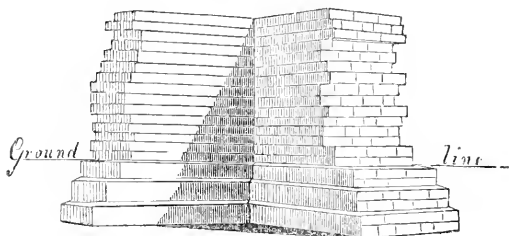
FLYING ARCH.—An arch abutting upon two walls, as in the case of the Bridge of Sighs at Venice.

FLY-BOARD.—The rudder or projecting board in the cowl of a chimney or kiln, which keeps the back of the cowl constantly turned towards the wind.

FLYERS.—The steps in a straight flight of stairs. The term is used in contradistinction to that of **WINDERS**, which designates those steps which turn on the curve.

FODDERING BAY. A recess in a stable, or cattle shed, in which hay, &c. is kept.

FOOTINGS.—The lowest courses in the foundation of a wall ; usually built wider than the wall itself.



FORESLAB.—*See* SLAB.

FREESTONE.—Any description of stone which can be readily worked with the saw or chisel.

FRENCH CASEMENTS.—Windows, opening down to the ground in the centre, and hinged at the sides.

FRET, or LABYRINTH.—An ornamental band in Greek architecture, consisting of several vertical and horizontal fillets intersecting each other in various forms.

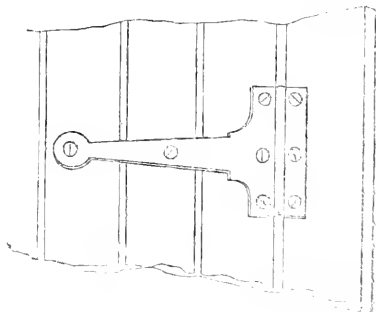
FRIEZE.—A component part of an entablature.—*See* ENTABLATURE.

GABLE.—The triangular piece of masonry or brickwork at the end of a roof which slopes only two ways.—*See* ROOF.

GABLET.—A diminutive gable.

GALLOWAY COPING.—A rough hammer-dressed coping [*see* COPING] projecting on both sides, beyond the wall which it caps.

GARNET (or CROSS-GARNET) HINGES.—Hinges of a common



description, having a long bar extending over and fastened upon the face of the doors. These hinges were formerly made very ornamental.

GARRETTED JOINTS.—In masonry, those mortar-joints which are stuck over with stone chippings.

GEOMETRICAL STAIR.—Such as have a circular or oval well-hole in the centre.

GIRDER.—*See* **JOIST.**—A **TRUSSED GIRDER** is a compound beam so constructed as to increase its strength and stiffness.—*See* **TRUSS.**

GREY STOCKS.—Bricks made either of marley clay, or of clay mixed with chalk.

GRIP.—A gutter or drain channel.

GROINS.—The angles formed by the surfaces of vaults intersecting one another.

GROOVE.—Any channel or sinking cut in masonry, carpentry, or joinery, for the purpose of more closely uniting two portions of the work together. **GROOVED AND TONGUED**, or **PLOUGHED AND TONGUED** are the terms used in joinery, the tongue being the projection which fits into the groove. In masonry, the term **JOGGLED** is applied with the same meaning.—*See* **JOGGLED.**

GROUNDs, also called **BACKFILLETING**, are either slips of wood fixed at a perfect level at intervals, against masonry or brick-work, for the purpose of attaching wood finishings to the wall; or they are narrow-wrought boards fixed to range exactly with the plastering. In the latter case they are generally termed **PLASTER GROUND**s. Plaster grounds are frequently grooved on the edge, in order to give a hold to the adjoining plaster; but they are also sometimes sloped on the edge, so as to make the back narrower than the front, and to admit the plaster behind them, in which case they are called **BEVELLED GROUND**s.

GROUT, *unde* **GROUTED.**—Liquid mortar which is poured into walls whilst in course of building, for the purpose of filling up any crevices, into which the building mortar may have failed to penetrate.

GUAGE.—In slating and tiling, a term denoting the space or distance which intervenes between the battens for the former, or the laths on which the latter is placed. The guage is reckoned from centre to centre of the battens or laths: and the instrument with which the distance is measured is called a **GUAGE**.

GUAGED ARCH.—In brickwork, curved or flat arches formed of bricks originally moulded in the shape of a wedge, and afterwards rubbed down at the sides so as to suit the exact radiations of the arch. The term “GUAGED” originates in the form of the arch being regulated by a “guage,” or rule of wood.

GUDGEON.—A term applied to a pin which works in a socket.

HALVING.—A method of joining timbers together endwise, by means of two notches fitting into each other, and fastened together by wooden pins or iron spikes.

HAMMELS.—Open sheds, having enclosed courts in front, and used for keeping cattle.

HANDRAIL.—*See* STAIRCASE.

HANGING-POST.—The post to which a gate is hung.

HARLING.—A provincial (Northern) term for roughcasting.

HAUNCHES of an Arch.—*See* ARCH.

HEAD of a partition.—*See* PARTITION.

HEADERS.—Those stones or bricks, which, lying across the wall, show their ends externally. The term is used in contradistinction to that of **STRETCHERS**, which lie along the wall, showing their sides.


HEARTH.—*See* SLAB.

HEARTED, also PACKED.—In masonry, the filling in of the rubble work with mortar, and stonechips.

HEEL POSTS, or STALL POSTS.—Those posts in a stable which support the stall divisions.

HEEL PIECE.—*See* TRUSS.

HERRINGBONE WORK, in walling or paving.—Work in which the stones or bricks are laid diagonally, in alternate courses.

HERRINGBONE STRUTS.—A method of stiffening joists by introducing between their intervals, strips of wood crossing each other thus , and nailed at the top and bottom to the sides of the adjacent joists.

HIPS.—The side-sloping angles (answering to side-ridge angles [*see* RIDGE]) of a roof sloping in more than two directions; and thence called a **HIP ROOF**. The rafters forming the top angles of these hips are called **HIP RAFTERS**; and the hips of a tiled roof are frequently covered with a peculiarly shaped tile, denominated a **HIP TILE**.

HIP ROLL.—*See* RIDGE ROLL.

HOLDFAST.—An iron spike, having a broad thin head perforated with one or more nailholes. The holdfast being driven into brickwork or masonry, presents a hold for rainwater pipes, &c., which may be attached to it by means of nails, driven into the nailholes prepared for their reception.

HOOD MOULDING, LABEL, or DRIP.—In Gothic architecture, (and thence adopted in common parlance,) the upper exterior moulding of an arch, projecting so as to carry off the rain.

HORIZONTAL BOND.—*See* VERTICAL BOND.

HORNS of a door, window, or other frame.—Those projecting ends of the head or lintel, which are let into the brick or stone jambs.

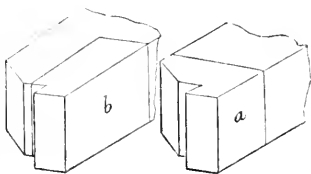
HORSED.—Set up boards are generally said to be horsed, when piled up to dry against a wooden frame or “horse.”—*See* STACKED.

HOUSED.—Let into.

IMPOST.—The horizontal mouldings commonly introduced at the springing of arches in classic architecture.

IN-AND-OUT-TIE.—A species of bond-work in masonry analagous to that known as “header and stretcher” in brickwork.—*See* HEADER.

IN-BOND RABBET or REBATE.—In masonry, the jambstone [*see* JAMB] of a door or window-opening built (or bonded) in [*see* BOND] across the wall and RABBETTED for the reception of the frame. The term “in-bond,” (*a*) is used in contradistinction to the “out-bond” (*b*) with which it alternates in successive courses.



INTRADOS.—The underedge of an arch.—*See* ARCH.

INVERTED ARCH.—An arch turned upside down, and of which the crown [*see* ARCH] is the lowest part. This arch is chiefly introduced under piers, [*see* PIERS] so as to equalize their pressure upon the foundation, and to prevent the walls from settling or cracking.

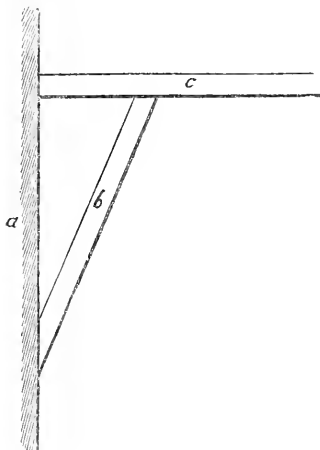
IRON-BRICK.—*See* AIR-BRICK.

IRON SHOES.—Open sockets of cast-iron, similar in form to the shoes for locking coach wheels, and frequently attached to timbers to receive the ends of other timbers, when it is thought that either may be materially weakened by being cut into for the reception of the other.

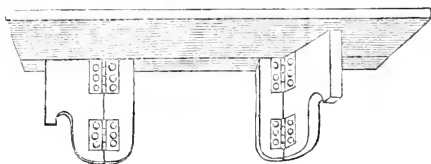
IRON SHUTTER TURNFAST or **IRON-TURN**.—A contrivance for keeping window-shutters which are hinged outside, open.

JAMBS.—In masonry, or brickwork, the sides of doors, windows, and fireplaces.—*See CHIMNEY-PIECE.*

JIB.—A diagonal rakingbrace supporting a weight upon its upper end.—Thus, *a* being the wall or upright; *b* is the jib; and *c*, the beam or other weight to be supported.



JIB-BRACKETS.—Brackets folding or falling with a hinge.



JIB-DOOR.—A door made flush to the wall, so as to be imperceptible when shut.

JOGGLED.—In masonry, let into with notched joints corresponding to the groove and tongue in carpentry.—*See GROOVE and TONGUE.*

JOINTED.—Brickwork is said to be jointed when the face of the mortar-joints between the bricks are worked fair and smooth with the trowel. **RULE JOINTED** is a term applied when, in addition to the **JOINTING** already described, a line is drawn

along the centre by means of an iron tool called a **JOINTER**, and a **STRAIGHT-EDGE** or **IRON-RULE**.

JOINTER.—*See* **JOINTED**.

JOISTS.—Those timbers in a floor [*see* **FLOOR**] which carry the flooring boards. Joists reaching from wall to wall, and having their bearing independent of each other, are called **COMMON JOISTS**. Joists, which having their ends laid not upon the wall but upon other joists, whilst they themselves at the same time receive the ends of others, are called **TRIMMERS**; those which have their ends laid upon other joists without themselves supporting any, are said to be **TRIMMED**, whilst those again which receive only the ends of the **TRIMMERS** are distinguished as **TRIMMING JOISTS**.

When the width from wall to wall is too great for the bearing of common joists, large beams or **GIRDERS** are introduced, to break the span, and the joists laid from girder to girder. In this case the joists are termed **BRIDGING JOISTS**. Sometimes cross timbers of an intermediate strength are introduced resting upon the girders and carrying the joists (which in such a case run parallel to the girders) and such cross timbers are called **BINDERS**, or **BINDING-JOISTS**. The small parallel timbers nailed on to girders or binders for the reception of the laths and plaster ceiling are denominated **CEILING-JOISTS**.

JUMPER, *unde* **JUMPING**.—A long, blunt, iron chisel, used for boring through stone. The operation of boring being called **JUMPING**.

JUTTED SILLS.—A provincial term for sills projecting from the wall.—*See* **CILL**.

KEY, or **KEystone**.—*See* **ARCH**.

KING-POST.—The centre upright timber in the framing of a roof, which is thence denominated a king-post roof.—*See* **ROOF**.

KING-BOLT.—A wrought-iron rod sometimes employed in lieu of a king-post.

KNOTTING.—The covering of the knots in wood with paint (generally red-lead) preparatory to the process of painting.—*See* **PAINTING**.

LABEL.—*See* **HOODMOULDING**.

LACING COURSES.—Another term for vertical and horizontal bond.—*See* **VERTICAL** and **HORIZONTAL BOND**.

LANDING-STONE.—The stone which forms the landing of a doorway.

LATCHET.—A latch.

LATERAL THRUST.—Pressing laterally on the sides—not directly downwards.

LEAD APRONS.—*See* LEAD FLASHINGS.

LEAD FLASHINGS.—Strips of lead laid over joints exposed to the weather, as for instance the ridges or hips of roofs—the point of junction of slating with the wall, or of the slating with a chimney-shaft &c. These lead-flashings are fastened with wall-hooks. **LEAD APRONS** are overlapping slips answering the purpose of FLASHINGS in any situation excepting points of junction.

LEAD QUARRY-LIGHTS.—The leaden frames in which the glass quarries [*see* QUARRY] of a window are set.

LEAN-TO ROOF.—*See* ROOF.

LIME-RIDDINGS.—Pieces of lime which will not pass through a riddle, or iron sieve.

LININGS.—Thin boards used for lining the walls of a room or the inside of a closet, &c. The term “lining” is also generally applied to the sides of door or window openings.

LINTEL.—The headpiece inserted over any opening; as doors, windows, &c.

LISTED-BOARDS.—Boards sorted, or rather matched, so as to make the floor all over of an even colour.

LISTINGS.—Cement fillets on an inclined plane.

LITHIC-PAINT.—Stone paint.

LOUVRE-BOARDS.—*See* LUFFER-BOARDS.

LOUVERT.—A Lantern.

LUFFER-BOARDS.—Inclined boards placed one above another in a frame so as to admit the air without permitting the sun or rain to penetrate.

MANHOLE.—An opening into a cesspool, drain, or sewer, sufficiently large to permit a man to enter for the purpose of examination, &c. Manholes are usually fitted with a stone or iron covering.

MANTEL-TREE, or PANTEL-PIECE.—The lintel placed over the opening of a fire-place.

MATCH-PLANED.—Grooved and tongued on the edge, so as to fit firmly.

METOPE.—In architecture,—spaces left in a Doric entablature, between the tryglyphs, or channelled tablets in the frieze. The metope was sometimes left plain, and sometimes filled in with bas-reliefs.

MEZZANINE.—*See* ENTRESOL.

MILLED LEAD.—Sheet lead pressed in a mill to certain thicknesses, varying from four to eight pounds in weight per superficial foot, according to such thickness.

MILLED SLATE.—Slate sawn by machinery from a block into slabs of various thickness.

MITRE.—The angle of intersection of a moulding or frame.

MITRE-WHEELS.—Toothed wheels fitted to work at right angles, one within another.

MORTISE.—A square socket cut in any timber, for the reception of a tenon or tongue, formed on the edge of another.

A **MORTISED LOCK** is one let into a **MORTISE** cut in the style of a door for its reception.

MOWSTEAD.—In barns, boarded frames, carried up two or three feet in height, so as to separate the corn in course of threshing from the unthreshed corn on one side, and the threshed corn or straw on the other.

MULLIONS.—The upright bars or divisions between the lights, bays, or days of a window.

MUNTINGS, or MUNTINS.—Those centre uprights in the framing of a door, which separate its panels vertically.—*See* **Door**.

NECKING.—A moulding immediately above the shaft of columns or pilasters in the Tuscan, or Roman Doric orders of architecture.

NECK of a Chimney.—That portion of the interior, immediately above the fireplace.

NERVES.—The ribs or mouldings on the surface of a Gothic vault.

NEWEL, or NOWEL.—Originally the column formed by the inner circular ends of the steps of a corkscrew staircase:—but now commonly used to denote the framed standards at the foot and angles of a staircase, to which the handrail is affixed.—*See* **STAIRCASE**.

NEWEL STAIRCASE.—*See* **TURNPIKE STAIRCASE**.

NOGGED.—In masonry, worked rough with a sharp hammer.

NOGGING.—*See* **BRICKNOGGING**.

NOSING.—A term commonly applied to the rounded moulding on the front edges of steps and landings.—*See* **STAIRCASE**.

OAK STAGES.—In well-sinking,—pieces of timber fixed across the well from top to bottom, at intervals of eight or ten feet, in order to keep the pump and suction-pipe steady in their places.

OGEE.—A form of moulding, consisting of the combination of a quarter-circle, and hollow.

OPEN-FILLETING.—Slips of wood nailed on at intervals, as in the case of lattice-work.

OPENSPPARRED FRAME.—A frame filled in with lattice-work.

ORIEL.—*See* BAY-WINDOW.

OVERSAILING COURSES.—Courses of stone or brickwork, protruding beyond the face of those below.

OVOLO.—A quarter-round form of moulding, shaped like half an egg.

OVOLO SASHBARS.—Sash-bars having ovolo mouldings.

PACKED.—*See* HEARTED.

PAINTING.—The processes of painting are three in number :—*viz.* 1, **KNOTTING**, or covering the knots with paint to prevent the sap from oozing out; 2, **PRIMING**, or laying on the first coat; 3, **PAINTING**, or covering with any given number of coats.

PANELS, unde PANELLING.—In joinery, the filling-in of the compartments of any piece of framed work.

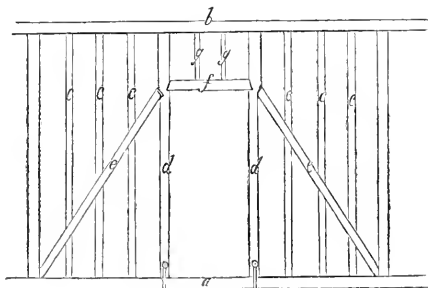
PANTILES.—Hollow-shaped tiles in contradistinction to **PLAIN-TILES**, which are flat.

PARAPETS.—The portion of the walls of a house rising above the roof-gutters. Also, the side walls of a bridge.

PARGETTING, or PARJETTING, unde PARGETTED.—A term applied to the internal plastering of chimney-flues. When the pargetting has set and become hard, the flue is **CORED** out, that is to say, cleared of any rough particles which have become attached to the pargetting.

PARQUETTED.—Inlaid.

PARTITION.—The component parts of a common timber partition



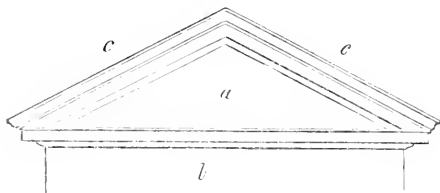
are as follows: the SILL, or CILL, *a*; the HEAD, *b*; and the QUARTERING, *c*: but when any extra strength is required, the following parts are added, *viz.* QUEEN-POSTS, *d*; BRACES, or STRUTTS, *e*; STRAINING-PIECE, *f*. The short quarterings, *g*, above the latter, being called PUNCHINS.

PATERA.—An ornament in the shape of a cup.

PAVILION ROOF.—A roof falling (or sloping) on all four sides.

PEDESTAL.—*See* COLUMN.

PEDIMENT.—A triangular form originally derived from the appearance of the end of a span roof; but now commonly applied as an ornament crowning doors or windows. The pediment comprises three component parts, *viz.* the TYMPANUM, *a*; the HORIZONTAL CORNICE, *b*; and the RAKING CORNICES, *c*.



PENSTONES.—A provincial term for ARCHSTONES.

PERPENTSTONE.—*See* BONDERS.

PIEN-TREES, sometimes PIENS, or PIENDS.—The hip-rafters of a roof.—*See* ROOF.

PIENS, or PANES OF A ROOF.—The flat space of a roof reaching from the ridge uninterruptedly to the eaves.—*See* ROOF.

PIER.—A plain pillar, or solid mass of building, between openings.—*See* ARCH.

PILASTER.—A flat rectangular column, usually projecting from the face of a wall, and forming a finish very similar to that of the Antæ.—*See* ANTÆ.

PILLAR.—An upright circular support, differing from a column in that it does not preserve the regularity of classic proportion.

PINING.—Floor and other boards are said "to pine," when they shrink.

PINRAIL.—A rail furnished with hat or cloak pins or pegs.

- PISÉ.**—A term applied to walls built of mud, or of a compost of gravel and lime compressed into blocks.
- PITCH.**—The slope of a roof, &c.
- PITCHED ROOF.**—A roof sloping and not flat.
- PITCHED.**—As applied to paved courtyards, flooring, &c. signifies sloped so as to carry off the water.
- PLAINTILES.**—*See* PANTILES.
- PLANCEER.**—*See* STAIRCASE.
- PLANTED.**—In joinery, laid on in a sinking or hollow.
- PLASTER-GROUNDS.**—*See* GROUNDS.
- PLATES.**—*See* FLOOR and WALL-PLATES.
- PLINTH.**—A term originating with the lower part of the base of a column, [*see* COLUMN] but now commonly used to signify the lowest plain projecting face of any erection.
- PLOUGHED.**—Grooved.
- PLOUGHED and TONGUED.**—A term used to designate boards, with one edge worked with a groove, and the other with a tongue, so that, when placed edge to edge, they fit into each other.
- POINTING, unde POINTED.**—*See* BED.
- POLE PLATE.**—In carpentry, a plate laid on the ends of the tie-beams of a roof, and on the walls to receive the feet of the upper or common rafters which carry the slate boarding.—*See* ROOF.
- PORCH.**—An enclosed covered way at the entrance of a building in contradistinction to—
- PORTICO.**—Which is a covered entrance-way, supported by pillars and open at the sides from the roof to the ground.
- PRIME, unde PRIMING.**—*See* PAINTING.
- PRINCIPALS.**—The main sloping timbers of a roof.—*See* ROOF.
- PROFILE CHIMNEY-PIECE.**—A chimney-piece with projecting jambs.—*See* CHIMNEY-PIECE.
- PUDDLED.**—Rammed watertight with clay.
- PUGMILL.**—A mill in which compounds, as of bricks, mortar, &c., are mixed and kneaded.
- PUGGING.**—As applied to floors, signifies the insertion of a layer of sand and plaster, or of common mortar, between the ceiling of a roof and the floor boards immediately above; so as to prevent the transmission of sounds from one floor to another.

PULLEY STYLES.—Those sides in a window-frame against which the edges of the sashes slide up and down, and containing at the top the pulleys over which the sashlines run.

PUNCHINS.—*See* PARTITION.

PURLINS.—Horizontal timbers resting upon the principal rafters of a roof, and intervening between the pole plates and ridge-rafters.—*See* ROOF.

PUTLOCKS, or PUTLOGS.—The cross pieces of a scaffolding.

PUTLOCK-HOLES, are holes left or made in the face of a wall for the insertion of the putlocks.

QUARRY.—In paving, a rectangular tile.

QUARRY of glass.—A small square, or diamond-shaped pane.

QUARRY-STONE.—Stone cut and shaped at the quarry, in the rough, for the particular purpose to which it is intended to be applied.

QUARTER.—A small square-sunk panel, in which any ornament is worked or set.

QUARTERING.—For the substantive [*see* PARTITION]; and for the verb, STOOthing.

QUEEN-POSTS.—A term used in contradistinction to king-posts, to denote the vertical timbers of a roof framed with two such timbers instead of one.—*See* ROOF.

QUIRK.—A sharp turn given to the edge of a moulding. This term is generally used in compounds, as QUIRKED-OVOLO, QUIRKED-OGEE, &c.

QUOINS.—*See* COINS.

RAB-AND-DAB.—When framed partitions in cottages are filled up with cob [*see* COB], instead of brick-nogging;—the work is called RAB-AND-DAB.

RABBET, or REBATE.—A grooved channel, or sinking, cut longitudinally in the edge of one piece of joinery to receive another.

RABBET-HEAD of a window.—A Scotch term for a rebated lintel.

RAGALET.—In masonry, a provincial term for a groove, chase, or rebate.

RAGGLED.—Housed, or firmly let into.

RAGGLINGS.—A provincial term for ceiling-joists.

RAILS.—In joinery, the crop pieces of a framing.

RAISING PLATES.—The wall-head-plates which receive the roof.
—*See* ROOF.

RAKE.—To cut a rake, is to reduce the rough-stepped edge of sloping brickwork to a straight sloping line, and smooth surface.

RAMPS.—In brickwork, an inclined plane, slope, or curve.

RANDOM-JOINTED.—In masonry or brickwork, worked irregularly instead of with a straight joint.

REBATE.—*See* RABBET.

RECESSED ARCH.—One arch built within another.

REDUCED BRICKWORK.—In estimating the price of brickwork, the cubic measure, however thick the work may be, is *reduced* to a superficial measure with a standard thickness of one brick and-a-half, of which standard measure $27\frac{1}{4}$ feet go to the square rod.

REEDS.—A provincial term for the combed wheat straw used for thatching.

REEDING.—A moulding formed of several small beads [*see* BEAD], placed side by side; and usually sunk so as to rise flush with the surrounding surface.

REIGNER-WORK.—Ornamental work made by inlaying woods of various colours in the forms of flowers, &c.

RELIEVO, or RELIEF.—In carving, projecting from the surface or background.—*See* BASSO-RELIEVO.

RENDER AND FLOAT.—In plasterer's work, to cover with two coats, finishing rough.

RENDER AND SET.—In plasterer's work; to cover with two coats, finishing smooth.

RENDER, FLOAT, AND SET, is a term of frequent occurrence as applied to plasterer's work in specifications; and is intended to comprise all the three coats or stages of plastering usually applied to walls. Of these the first or rough coat is called "THE PRICKING-UP" which is generally scored over in chequers, with a piece of lath, in order to prepare it when hardened to receive the second coat, which is called "THE FLOATING. The surface of the floating having been brushed with a birch broom to roughen the surface, the third or SETTING of fine-stuff is applied, which completes the work.—*See supra.*

The spreading of the first coat of plaster on *brickwork* is called **RENDERING**—on laths, **LAYING**.

REVEAL.—The return face of any opening in a wall.

Thus *a* is the wall; *b*, the REVEAL; a frame being fitted into the reveal.



RIBS.—In Gothic architecture, the mouldings on the under surface of a vaulted and groined roof or ceiling. In carpentry, the term is applied to those timbers which receive the boarding of a dome.

RIDER.—A band fixed into a wall for the reception of a hook, on which common doors (as cellar doors, &c.) are hung without a frame.

RIDGE.—The upper edge of a span roof.—*See* VALLEY and ROOF.

RIDGE-PIECE.—The thin rafter forming the ridge of a roof, and against which the rafters abut.—*See* ROOF.

RIDGE ROLL.—A cylindrical piece of wood nailed on to the upper edge of the ridge-piece, and over which the lead is spread, and fastened down or **DRESSED**. Similar rolls on the hips of a roof, also covered with lead, are called **HIP-ROLLS**.

RIDGE-SPIKES.—Nails with broad heads covered with lead—used for fastening down any lead covering.

RISER.—The upright face of a step.—*See* STAIRCASE.

ROACH-BELLIED,—formed in a segment of a circle on the under side.

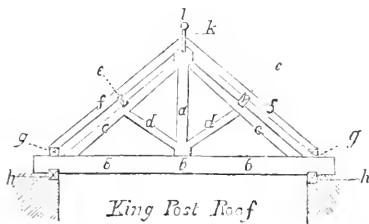
ROCK-WORK.—In masonry, stone worked rough.

ROD-BOLT.—A plain circular bolt of iron.

ROOF.—The word **ROOF** is now generally used to denote the timber framing which supports the covering of any building. The proper designation, however, of that framing is **ROOF-TRUSS**; the **ROOF**, in its original meaning being a general term for a covering whether framed or not.

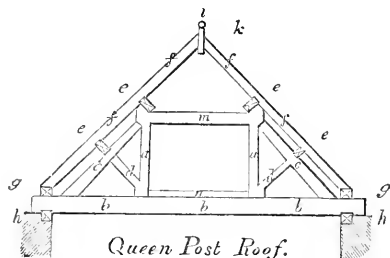
The two most common descriptions of **ROOFS**, or rather **ROOF-TRUSSES**, are those known as the **KING POST** (Fig. I.), and the **QUEEN POST** (Fig. II.) Their several component parts are as follows :—

FIG. I.



<i>a</i> , King Post.	<i>f</i> , Common Rafters.
<i>b</i> , Tye Beam.	<i>g</i> , Pole Plates.
<i>c</i> , Principal Rafters.	<i>h</i> , Wall Plates.
<i>d</i> , Struts or Braces.	<i>k</i> , Ridge.
<i>e</i> , Purlins.	<i>l</i> , Ridge Roll.

FIG. II.



<i>a</i> , Queen Posts.	<i>g</i> , Pole Plates.
<i>b</i> , Tye Beam.	<i>h</i> , Wall Plates.
<i>c</i> , Principal Rafters.	<i>k</i> , Ridge.
<i>d</i> , Struts or Braces.	<i>l</i> , Ridge Roll.
<i>e</i> , Purlins.	<i>m</i> , Straining or Camber Beam.
<i>f</i> , Common Rafters.	<i>n</i> , Straining Sill.

A **COLLAR BEAM** is a timber introduced in the position of the straining beam (Queen Post) in roofs of simpler form, which have no tie-beams, but depend on the collar for their connection.

A **LEAN-TO ROOF** is one, which, leaning against some higher building, slopes only one way. A **SPAN ROOF**, or **GABLE ROOF** is supported by two walls of equal height, meets with a ridge in the centre, and slopes in two opposite directions; when a roof slopes also at the ends, it becomes a **HIPPED ROOF**; when perfectly square and sloping all ways, it is a **PYRAMIDAL ROOF**; when oblong and sloping all ways, a **PAVILION ROOF**.

RUBBLESTONE.—Stone rough from the quarry.

RUSTICATED, OR WORKED IN RUSTIC.—In masonry, or imitation stone-work, a term applied to courses worked with grooves deeply wrought, and dressed (or worked smooth) between each.

RULE-JOINT.—A joint in joinery similar to that in a carpenter's rule.

RULE-JOINTED.—In brickwork.—*See* **JOINTED**.

RUN-BEAM.—A round rail on the front edge of a manger.

RUN-CHANNEL.—A gutter in paving.

RUN-TREE.—A rail fixed along the tie-joists in stabling.

RUNGS.—The spokes or upright rails of a hayrack. Also, the rounds of a ladder.

RYBAT, or RYBET.—*See* RABBET.

SADDLE-BARS.—In an iron casement, those cross-bars to which the leadwork for the glazing is affixed.

SAND-DASHING.—Rough-casting.

SAP-WOOD.—Outside wood, not properly matured.

SARKING.—Thin boards used for linings, &c. Also, the boarding on which slates are laid.

SCABBLED, or SCAPPLED.—In masonry, stonework dressed with the pick end of the hammer.

SCANTLING.—In carpentry, the word “SCANTLING” signifies “proportions of breadth, depth, and thickness,” and thus the term frequently occurs in specifications: as “Scantlings as follows,” or “of the proper Scantlings,” &c. The word “Scantling” is also frequently applied colloquially to any small pieces of timber-stuff, which are not of sufficient importance to be more particularly described.

SCARFING.—In carpentry, the joining of the ends of two timbers together in such a way as to make them one both in appearance, and in strength.

SCARCEMENT.—In masonry, a setting back.

SCORED.—Lined.

SCRIBED.—Cut at the edge, so as to touch and fit into every point of an irregular surface.

SCUNCHEONS.—The bevelled parts [*see* BEVEL], splays, or elbows of the inside of a window-opening, where the shutters are placed.

SET-AND-RENDERED.—*See* RENDER-AND-SET.

SHAFT.—*See* CHIMNEY-SHAFT.

SHAKES.—Fissures in timber.

SHINGLES.—Wooden tiles.

SHOOT.—A spout.

SHORE, *unde* SHORING.—To prop up.

SHOULDERED.—In slating, slates are said to be “shouldered,” when a thick layer of mortar is put upon the upper part of one row of slates, to serve as a bed for the next.

SHUTTER-BOXINGS.—*See* BACK-FLAPS and BOXINGS.

SIDE-ARMS.—In door and other frames, side-pieces which extend into the wall, in order to hold them firmly in their place.

SILL, SOLE, or CILL.—A large projecting piece of stone fixed in the lower part of a door or window-frame. The word “Sill,” is also applied to a portion of the framing of a partition.—*See* PARTITION.

SKEW-BACK.—A stone at the point, whence on arch springs or upon which it abuts.—*See* ARCH.

SLAB.—The stone inserted at the bottom of a fire-place, to receive the ashes, &c. There are always two slabs;—the BACK-SLAB which is under the grate, and the front or FORE-SLAB, more commonly known by the name of the HEARTH.

SLATE-BOARDING, also called Sarking.—*See* SARKING.

SLATES.—The various descriptions of slates, with their dimensions, are as follows :—the largest being of course deemed the best.

	'	"	'	"		'	"	'	"		
Queens	3	0	×	2	0	Countesses	1	8	×	0	11
Imperials	2	6	×	2	0	Ladies	1	3	×	0	8
Dutchesses	2	0	×	1	0	Doubles	1	0	×	0	6

SLEEPER.—*See* SLEEPER WALLS.

SLEEPER WALLS.—Dwarf walls built under the lowest flooring of a building, in order to receive timber-plates or beams, upon which the floor-joists are laid. The timbers laid upon these “sleeper-walls, and which carry the floor-joists and flooring are called SLEEPERS.

SLIP-CENTRE, or TURNING-PIECE.—A slip of deal upon which a flattened arch is built, and for which it acts as a centering.

SLIPS in a fire-place.—The sides of the jambs.—*See* JAMBS.

SMOCK-MILL.—A mill built of timber. A TOWER-MILL is one built wholly of masonry or brickwork.

SNECK.—A latch.

SOFFIT.—The under side of an arch or other opening, or of any horizontal projection.

SOLE-TREE.—The sill [*see* SILL] into which posts are mortised, [*see* MORTISE] and more especially used in the construction of cattle-sheds, or cow-houses.

SOMMERING-LINES.—*See* ARCH.

SORTED-IN-COURSES.—In slating, laid so that the joints may form regular lines.

SPAN of an ARCH.—*See* ARCH.

SPANDRILS of DOOR-STEPS.—Arches or walls, supporting the ends of steps. For the use of the term as applied to staircases.—*See* STAIRCASE.

SPARS.—A provincial term for common rafters.—*See* RAFTER.

SPEY-TIMBER.—Scotch pine, grown on the banks of the Spey.

SPIT, or BROACH.—A hooked rod, used in thatching.

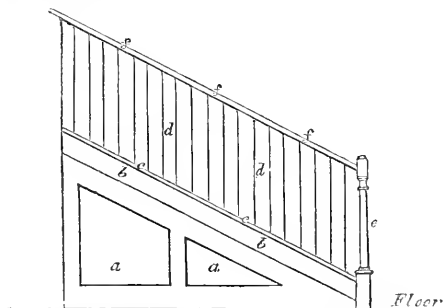
SPLAYED.—Having the corners cut off.

SPRINGING of an Arch.—*See* ARCH.

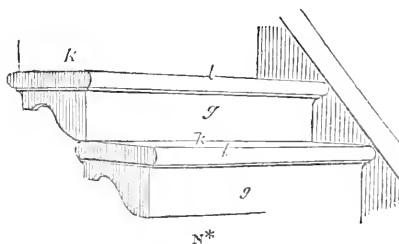
SQUARE.—In measurement an area containing 100 square or superficial feet.

STACKED, or HORSED.—Set upon end in stacks, ranges, or rows.—*See* HORSED.

STAIRCASE, more properly STAIR.—The component parts of a "stair," or staircase are as follows:—*a*, the SPANDRIL; *b*, the STRING; *c*, the PLANCEER; *d*, BALUSTERS; *e*, the NEWEL; *f*, the HAND-RAIL, *g*.



The details of a STEP are the RISER, *g*; the TREAD, *k*; and the NOSING, *l*.



STALK.—A provincial synonyme for **SHAFT**, [*see* **SHAFT**] as chimney stalk, &c.

STANCHION-BARS, or **STAUNCHION-BARS.**—Window-bars generally employed as a means of additional strength; but frequently only for the purposes of protection.

STANDARD.—An upright rail.

STEENING, or **STEINING.**—Lining (generally of wells) with bricks or stone, laid dry, without mortar.

STEP.—*See* **STAIR.**

STEP-FLASHING.—In plumber's work, lead flashing [*see* **FLASHING**] let into the joints of brickwork, (principally at the point of junction of chimney-shafts, &c. with the roof) and rising one above another in the manner of steps.

STEPPED GABLE.—In Gothic architecture, a gable [*see* **GABLE**] broken by embattlements.

STENCH-TRAP.—*See* **BELL-TRAP.**

STOCK-LOCK.—A lock having a wooden back or "stock."

STOOTHING, *unde* **STOOTHED.**—In carpentry, "quartering;" *i. e.* the laying of battens against a wall, for the reception of laths.

STORM-HEAD.—A term applied to a projecting window with a gabled head.

STORY-POSTS.—Isolated posts, supporting a bressummer, beam, or girder.

STRAIGHTED.—In plastering, made even or smooth.

STRING-COURSE.—A horizontal band or moulding, running along one or more sides of a building.

STRING, of a staircase.—*See* **STAIRCASE.**

STRUTS.—*See* **ROOF** and **PARTITION.**

STUCK.—A provincial term for "worked"—as "stuck with astragal and hollow moulding."

STUD-WORK.—A provincial term for "FRAMED-WORK."

STYLES.—The side verticle pieces of door and window-frames, &c.
—*See* **DOOR.**

STYLOBATE.—A pedestal.—*See* **COLUMN.**

SUBSILLS.—Sills underground, or below the usual positions of sills.

SWAG.—A curve.

SWING-HINGES.—Hinges set on a centre, and working both ways.

T-BAND, or T-HINGE.—A common description of hinge.

TABLE-STONES or TABLING-STONES.—Stones used to place upon gables [*see GABLE*] in lieu of coping.—*See COPING.*

TALL-BOYS.—Long chimney-funnels, made of metal.

TARLOGIE DEALS.—Deals cut from timber grown in a native forest.

TARRAS.—A volcanic earth (decomposed basalt) found in Sweden and Germany, and used as cement.

TAZZA. Cupshaped.

TEMPLATES.—Short pieces of timber, stone, or iron, laid under the ends of beams or girders (somewhat in the manner of corbels) to spread the pressure and afford an equal bearing.

TENONS.—Square pieces of wood or iron fitted into sockets or mortise-holes [*see MORTISE*] cut for their reception.

THOROUGH.—The space in which the wheel of a water-mill works.

THROUGHED.—Worked through with **CROSSTIE** or **BOND-STONES**.—*See BOND-STONES.*

THROATED.—In stonework, worked with a groove underneath.

TIE-BEAM.—*See ROOF.*

TIE-ROD.—An iron rod, serving the purpose of a tie-beam.

TILTER, or TILTING-FILLET.—A slip of wood inserted under slating at the eaves, and also at the point of junction of the slating with the wall, so as to give a slight inclination to the verge or border-slates, and turn the water away from the brickwork.

TIMBER-FLITCHES.—*See TRUSS.*

TONGUED.—Worked with a tongue fitting into a groove.—*See GROOVED and TONGUED.*

TOOLED.—In masonry, worked with the chisel, so as to show the chisel marks.

TOP-PLATES.—Wall-plates.—*See ROOF.*

TORUS-MOULDING.—A moulding shaped as a semi-circle between two rectangles, as at *a*.

TOWER-MILL.—*See SMOCK-MILL.*

TRANSEPT.—When a church is built in the form of a cross, the two arms of the cross are called “the Transepts.”

TRANSOM.—The cross-beam forming the horizontal bar of a window, and most frequently used in the Gothic or Elizabethan styles of architecture.



TRAVIS.—*See* TREVIS.

TREAD.—*See* STAIRCASE.

TRAP.—*See* BELL-TRAP.

TREENAIL.—A wooden nail or pin.

TRESSEL, or TRUSSLE.—A sort of stool used to support interior scaffolding.

TREVIS, or TRAVIS.—A term applied to the stall partitions in stabling.

TRIMMED.—Framed round so as to leave a clear opening.—*See* JOIST.

TRIMMERS.—Those frame timbers used in “trimming,” which are at right angles to the wall; the return-piece running parallel to the wall being called the TRIMMING-PIECE.—*See* JOIST.

TRIMMER-ARCH.—An arch turned to support the slabs of a fire-place [*see* SLAB], and abutting on one side on the wall, and on the other on the trimming-piece.—*See* TRIMMERS.

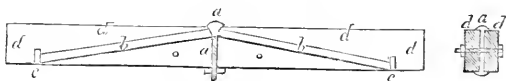
TRIMMING-PIECE.—*See* TRIMMERS.

TRUNCATED.—Cut off.

TRUNK.—A tube.

TRUSS.—When the girders of a floor [*see* GIRDER] have very long bearings, or when the floor is required to bear a great weight; a frame so constructed as to discharge the weight from the centre of the floor on to the walls is substituted for a common beam. This framework is called a TRUSS. There are two descriptions of truss, *viz.*,—The KING-BOLT TRUSS, and the QUEEN-BOLT TRUSS, the component parts of which are as follows:—

KING-BOLT TRUSS.



a, King-bolt.

b, Braces.

c, Heel-pieces.

d, Side-pieces, or Timberflitches.

QUEEN-BOLT TRUSS.



a, Queen-bolts.

b, Braces.

c, Heel-pieces.

d, Side-pieces.

e, Straining-piece.

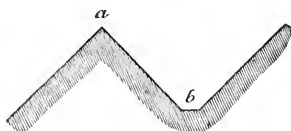
TURNING-PIECE.—*See* SLIP CENTRE.

TURNPIKE STAIRCASE, or NEWEL STAIRCASE.—A staircase in which the stairs wind round a central newel, [*see* NEWEL] extending throughout, from the top to the bottom.

TYMPANUM.—The flat surface or space within a pediment [*see* PEDIMENT] in classic architecture; or between the top of a door and the arch above it, in the Norman and Gothic styles.

UNDER-PINNING.—In masonry or brick-work, the introduction of additional foundations to a building, which has become defective in its substructure.

VALLEY.—The lower space in a ridge and valley-roof [*see* ROOF]; as *a*, the “ridge,” *b*, the “valley.”—*See* RIDGE.



VALLEY-GUTTER.—A gutter in the valley of a roof.—*See* VALLEY.

VERGE-SLATES.—*See* BORDER-SLATES.

VERTICAL AND HORIZONTAL BOND.—**VERTICAL BOND** is a manner of laying courses of bricks, stone, or other materials up and down, so as to strengthen the building vertically. **HORIZONTAL BOND** is the laying of the courses across, so as to have the same effect horizontally. **VERTICAL AND HORIZONTAL BOND** is a combination or alternation of both methods in such a manner as to give the greatest possible strength.

VESTIBULE.—An ante-hall, lobby, or inner-porch.

VOUSSOIR.—*See* ARCH.

WALL-DOCKS.—Plugs of wood inserted into the wall, for the reception of subsequent fixtures.

WALL-HEAD TABLINGS.—Copings bevelled so as to throw off the rain.

WALL-HOLD.—When the end of any stone or timber is inserted deeply into the wall, it is said to have a good “wall-hold.”

WALL-PLATES.—Horizontal timbers laid upon the walls to support the roof-timbers.—*See* ROOF.

WALL-STRAPS.—Battens or pieces of quartering laid against the wall, and upon which laths, &c. are nailed.

WARPINGS.—Braces.—*See* BRACES.

WASHED OFF.—A provincial term for “sloped.”

WATER-TABLE, or WEATHERING.—A ledge left in walls at the point whence the thickness sets off, or diminishes upwards.

WATER-VERGE.—A slip of wood nailed on to the bottom of a window-frame outside, so as to throw off the rain.

WEATHER-BOARDING.—Feather-edged boards [*see* FEATHER-EDGED] lapping over each other, so as to form a protection from the wind and rain.

WEATHER-TILING.—Tiles used for covering walls instead of coping.
—*See* COPING.

WEATHERING.—*See* WATER-TABLE.

WELL-CURB.—*See* BARREL-CURB.

WELDING, unde WELDED.—The union of two pieces of iron by heating and hammering.

WELSH CORNICE.—A cornice [*see* CORNICE] formed in brick-work, by two or three courses of bricks protruding one beyond the other ;—the top course being usually finished with brick dentels.—*See* DENTEL.

WELSH-LUMPS.—Large bricks made of fire-clay.

WHINSTONE.—A name locally applied to any stone not being freestone.—*See* FREESTONE.

WINDERS.—In a staircase.—*See* FLYERS.

WITHE of a FLUE.—The division wall of flues built back to back.

WOOD-BRICKS, or WOODEN BRICKS.—Pieces of wood formed of the dimensions of a brick, (that is to say 9 inches by $4\frac{1}{2}$, and inserted into walls at intervals, for the accommodation of subsequent fixtures.

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